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**SUBSTITUTE HOUSE BILL 1724**

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**State of Washington****54th Legislature****1995 Regular Session**

**By** House Committee on Government Operations (originally sponsored by Representatives Reams, Rust, L. Thomas, Goldsmith, Ogden, Patterson, Poulsen, Scott, Regala, Mastin, Valle and Chopp; by request of Governor Lowry)

Read first time 03/01/95.

1 AN ACT Relating to implementing the recommendations of the  
2 governor's task force on regulatory reform on integrating growth  
3 management planning and environmental review; amending RCW 43.21C.075,  
4 43.21C.031, 43.21C.110, 43.21C.080, 36.70A.140, 36.70A.300, 36.70A.330,  
5 90.58.020, 90.58.030, 90.58.050, 90.58.060, 90.58.080, 90.58.090,  
6 90.58.100, 90.58.120, 90.58.140, 90.58.180, 90.58.190, 34.05.461,  
7 34.05.514, 36.70A.130, 36.70A.320, 82.02.090, 82.02.020, 82.46.010,  
8 35A.40.210, 36.70A.440, 36.70A.065, 58.17.090, 58.17.092, 58.17.100,  
9 58.17.330, 35.63.130, 35A.63.170, 36.70.970, 7.16.360, and 58.17.180;  
10 reenacting and amending RCW 36.70A.030 and 36.70A.290; adding new  
11 sections to chapter 36.70A RCW; adding a new section to chapter 43.21C  
12 RCW; adding a new section to chapter 82.02 RCW; adding a new section to  
13 chapter 35.22 RCW; adding a new section to chapter 35.23 RCW; adding a  
14 new section to chapter 35.43 RCW; adding a new section to chapter 36.32  
15 RCW; adding a new section to chapter 36.77 RCW; adding a new section to  
16 chapter 56.08 RCW; adding a new section to chapter 57.08 RCW; adding a  
17 new section to chapter 64.40 RCW; adding new sections to chapter 43.131  
18 RCW; adding a new section to chapter 4.84 RCW; adding new chapters to  
19 Title 36 RCW; adding a new chapter to Title 90 RCW; creating new  
20 sections; recodifying RCW 82.02.020, 82.02.050, 82.02.060, 82.02.070,  
21 82.02.080, 82.02.090, 82.02.100, 36.70A.065, and 36.70A.440; repealing

1 RCW 90.58.145, 90.62.010, 90.62.020, 90.62.030, 90.62.040, 90.62.050,  
2 90.62.060, 90.62.070, 90.62.080, 90.62.090, 90.62.100, 90.62.110,  
3 90.62.120, 90.62.130, 90.62.900, 90.62.901, 90.62.904, 90.62.905,  
4 90.62.906, 90.62.907, and 90.62.908; making an appropriation; providing  
5 an effective date; providing an expiration date; and declaring an  
6 emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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14 NEW SECTION. **Sec. 1.** The legislature recognizes by this act that  
15 the growth management act is a fundamental building block of regulatory  
16 reform. The state and local governments have invested considerable  
17 resources in an act that should serve as the integrating framework for  
18 all other land-use related laws. The growth management act provides  
19 the means to effectively combine certainty for development decisions,  
20 reasonable environmental protection, long-range planning for cost-  
21 effective infrastructure, and orderly growth and development.

22 **PART I - PLANNING AND ENVIRONMENTAL REVIEW**

23 NEW SECTION. **Sec. 101.** In reviewing a development permit  
24 application and making permit decisions, a county or city planning  
25 under RCW 36.70A.040 shall rely on its development regulations and  
26 comprehensive plan to determine permitted land uses, including  
27 conditional and special uses, allowable densities, system improvements  
28 related to the proposal if the comprehensive plan and development

1 regulations provide for funding of these improvements, and other  
2 matters. During the project review the county or city shall not  
3 reexamine alternatives to or hear appeals on these matters, except for  
4 code interpretation.

5 A proposed project's consistency with development regulations and  
6 the comprehensive plan shall be determined by the county or city  
7 considering the type of land use, the level of development,  
8 infrastructure, including public facilities and public services needed  
9 to serve the development, and the character of development, such as  
10 design and development standards. Determination of a project's  
11 consistency does not require documentation or use of any specific  
12 procedure.

13 Specific project design and conditions relating to the character of  
14 development, the payment of impact fees, or other measures to mitigate  
15 a proposal's probable adverse environmental impacts, if applicable,  
16 shall be identified during the project review.

17 If the conditions of section 103 of this act are met, the  
18 requirements for environmental analysis and mitigation measures in  
19 development regulations are presumed to provide adequate mitigation for  
20 the specific adverse environmental impacts to which the requirements  
21 apply. Permitting agencies shall continue to have the authority to  
22 approve, condition, or deny projects as provided in their development  
23 regulations and in their policies adopted under RCW 43.21C.060.

24 NEW SECTION. **Sec. 102.** A new section is added to chapter 36.70A  
25 RCW to read as follows:

26 Project review by a county or city planning under RCW 36.70A.040  
27 shall be used to make individual project decisions, not land use  
28 planning decisions. If, during project review, a county or city  
29 identifies deficiencies in plans or regulations, the project review  
30 shall continue and shall not be used as a comprehensive planning  
31 process, but any deficiencies in the comprehensive plan or development  
32 regulations shall be noted for consideration during the periodic review  
33 of the comprehensive plan and development regulations. Procedures  
34 shall include allowing persons to suggest changes in the comprehensive  
35 plan and development regulations.

36 For purposes of this section, a deficiency in a comprehensive plan  
37 or development regulation refers to the absence of required or  
38 potentially desirable contents of a comprehensive plan or development

1 regulation. It does not refer to whether a development regulation  
2 addresses a project's probable site-specific adverse environmental  
3 impacts that the permitting agency could mitigate in the normal project  
4 review process.

5 NEW SECTION. **Sec. 103.** A new section is added to chapter 43.21C  
6 RCW to read as follows:

7 (1) The legislature finds that a wide range of environmental  
8 subjects and impacts have been addressed by counties, cities, and towns  
9 in comprehensive plans and development regulations adopted under  
10 chapter 36.70A RCW, and by the state and federal government in  
11 environmental rules and laws. These plans, regulations, rules, and  
12 laws often provide environmental analysis and mitigation measures for  
13 project actions without the need for an environmental impact statement  
14 or further project mitigation. When existing plans, regulations,  
15 rules, or laws provide environmental analysis and mitigation measures  
16 for the specific adverse environmental impacts of proposed projects,  
17 these requirements should be integrated with, and should not be  
18 duplicated by, environmental review under this chapter. The  
19 legislature reaffirms that a primary role of environmental review under  
20 this chapter is to focus on the gaps and overlaps that may exist,  
21 taking into account the other laws and requirements. Review of project  
22 actions in counties, cities, and towns planning under RCW 36.70A.040  
23 should integrate environmental review with project review and not use  
24 this chapter to substitute for other land use planning and  
25 environmental requirements.

26 A county or city planning under RCW 36.70A.040 shall attempt to  
27 prepare an enhanced detailed statement, or enhanced environmental  
28 analysis, of its proposed comprehensive plan, subarea plans, and  
29 development regulations that is of sufficient detail in addressing  
30 impacts and alternatives to allow the detailed statement to be used in  
31 whole or in part by applicants for development permits within the  
32 geographic area covered by the statement.

33 (2) In reviewing a project action, a county, city, or town planning  
34 under RCW 36.70A.040 shall presume that requirements for environmental  
35 analysis, protection, and mitigation measures in development  
36 regulations, comprehensive plans, and other applicable local, state, or  
37 federal laws and rules provide adequate analysis of and mitigation for  
38 the specific adverse environmental impacts to which the requirements

1 apply, and shall not conduct environmental analysis or impose  
2 mitigation under this chapter if the following has occurred:

3 (a)(i) The local government has considered the probable adverse  
4 environmental impacts of the proposed action and has determined that  
5 these impacts are adequately addressed by the development regulations  
6 or other applicable requirements of the comprehensive plan, subarea  
7 plan element of the comprehensive plan, or other local, state, or  
8 federal rules or laws; and

9 (ii) The local government has based or conditioned its approval on  
10 compliance with these requirements or mitigation measures.

11 (b) If the requirements of (a) of this subsection are not satisfied  
12 for some or all of the probable adverse environmental impacts of the  
13 project action, environmental review under this chapter shall be  
14 limited to those impacts and their effect on and relationship with  
15 other impacts, if any, consistent with the intent of this section, and  
16 shall be subject to the provisions of RCW 43.21C.060.

17 (3) For a county, city, or town planning under RCW 36.70A.040,  
18 project review shall not require additional environmental analysis or  
19 mitigation if the comprehensive plans, subarea plans, or development  
20 regulations already address a project s probable site-specific adverse  
21 environmental impacts, as determined under subsection (2) of this  
22 section. If a comprehensive plan, subarea plan, or development  
23 regulation adopted pursuant to chapter 36.70A RCW does not address a  
24 project s probable site-specific adverse environmental impacts, project  
25 review shall be integrated with environmental analysis under this  
26 chapter.

27 (4) The addressing of impacts in a comprehensive plan, subarea  
28 plan, or development regulation shall include but not be limited to the  
29 adoption or designation of levels of service, land use designations, or  
30 development standards.

31 (5) In deciding whether a specific adverse environmental impact has  
32 been addressed by an existing rule or law of another agency with  
33 jurisdiction with environmental expertise with regard to a specific  
34 environmental impact, the local government shall consult with that  
35 agency and may expressly defer to that agency. In making this  
36 deferral, the local government shall base or condition its project  
37 approval on compliance with these other existing rules or laws.

1       **Sec. 104.** RCW 43.21C.075 and 1994 c 253 s 4 are each amended to  
2 read as follows:

3       (1) Because a major purpose of this chapter is to combine  
4 environmental considerations with public decisions, any appeal brought  
5 under this chapter shall be linked to a specific governmental action.  
6 The State Environmental Policy Act provides a basis for challenging  
7 whether governmental action is in compliance with the substantive and  
8 procedural provisions of this chapter. The State Environmental Policy  
9 Act is not intended to create a cause of action unrelated to a specific  
10 governmental action.

11       (2) Unless otherwise provided by this section:

12       (a) Appeals under this chapter shall be of the governmental action  
13 together with its accompanying environmental determinations.

14       (b) Appeals of environmental determinations made (or lacking) under  
15 this chapter shall be commenced within the time required to appeal the  
16 governmental action which is subject to environmental review.

17       (3) If an agency has a procedure for appeals of agency  
18 environmental determinations made under this chapter, such procedure:

19       (a) Shall not allow more than one agency appeal proceeding on a  
20 procedural determination (the adequacy of a determination of  
21 significance/nonsignificance or of a final environmental impact  
22 statement)(~~(, consistent with any state statutory requirements for~~  
23 ~~appeals to local legislative bodies)~~). The appeal proceeding on a  
24 determination of significance(~~(/nonsignificance)~~) may occur before the  
25 agency's final decision on a proposed action. Such an appeal shall  
26 also be allowed for a determination of significance/nonsignificance  
27 which may be issued by the agency after supplemental review;

28       (b) Shall consolidate an appeal of procedural issues and of  
29 substantive determinations made under this chapter (such as a decision  
30 to require particular mitigation measures or to deny a proposal) with  
31 a hearing or appeal on the underlying governmental action by providing  
32 for a single simultaneous ((~~appeal of an~~) hearing before one hearing  
33 officer or body to consider the agency decision on a proposal and any  
34 environmental determinations made under this chapter, with the  
35 exception of the ((~~threshold determination~~)) appeal, if any, of a  
36 determination of significance as provided in (a) of this subsection or  
37 an appeal to the local legislative authority under RCW 43.21C.060 or  
38 other applicable state statutes;

1 (c) Shall provide for the preparation of a record for use in any  
2 subsequent appeal proceedings, and shall provide for any subsequent  
3 appeal proceedings to be conducted on the record, consistent with other  
4 applicable law. An adequate record consists of findings and  
5 conclusions, testimony under oath, and taped or written transcript. An  
6 electronically recorded transcript will suffice for purposes of review  
7 under this subsection; and

8 (d) Shall provide that procedural determinations made by the  
9 responsible official shall be entitled to substantial weight.

10 (4) If a person aggrieved by an agency action has the right to  
11 judicial appeal and if an agency has an appeal procedure, such person  
12 shall, prior to seeking any judicial review, use such agency procedure  
13 if any such procedure is available, unless expressly provided otherwise  
14 by state statute.

15 (5) (~~RCW 43.21C.080 establishes an optional "notice of action"~~  
16 ~~procedure which, if used, imposes a time period for appealing decisions~~  
17 ~~under this chapter.~~) Some statutes and ordinances contain time  
18 periods for challenging governmental actions which are subject to  
19 review under this chapter, such as various local land use approvals  
20 (the "underlying governmental action"). RCW 43.21C.080 establishes an  
21 optional "notice of action" procedure which, if used, imposes a time  
22 period for appealing decisions under this chapter. This ((~~section~~))  
23 subsection does not modify any such time periods. ((~~This section~~  
24 ~~governs when a judicial appeal must be brought under this chapter where~~  
25 ~~a "notice of action" is used, and/or where there is another time period~~  
26 ~~which is required by statute or ordinance for challenging the~~  
27 ~~underlying governmental action.~~)) In this subsection, the term "appeal"  
28 refers to a judicial appeal only.

29 (a) If there is a time period for appealing the underlying  
30 governmental action, appeals under this chapter shall be commenced  
31 within ((~~thirty days~~)) such time period. The agency shall give  
32 official notice stating the date and place for commencing an appeal.  
33 ((~~If there is an agency proceeding under subsection (3) of this~~  
34 ~~section, the appellant shall, prior to commencing a judicial appeal,~~  
35 ~~submit to the responsible official a notice of intent to commence a~~  
36 ~~judicial appeal. This notice of intent shall be given within the time~~  
37 ~~period for commencing a judicial appeal on the underlying governmental~~  
38 ~~action.~~))

1       (b) If there is no time period for appealing the underlying  
2 governmental action, and a notice of action under RCW 43.21C.080 (~~may~~  
3 ~~be used. If a notice of action~~) is used, (~~judicial~~) appeals shall  
4 be commenced within the time period specified by RCW 43.21C.080(~~7~~  
5 ~~unless there is a time period for appealing the underlying governmental~~  
6 ~~action in which case (a) of this subsection shall apply.~~

7       (c) ~~Notwithstanding RCW 43.21C.080(1), if there is a time period~~  
8 ~~for appealing the underlying governmental action, a notice of action~~  
9 ~~may be published within such time period).~~

10       (6)(a) Judicial review under subsection (3) of this section of an  
11 appeal decision made by an agency under (~~RCW 43.21C.075(5)~~)  
12 subsection (3) of this section shall be on the record, consistent with  
13 other applicable law.

14       (b) A taped or written transcript may be used. If a taped  
15 transcript is to be reviewed, a record shall identify the location on  
16 the taped transcript of testimony and evidence to be reviewed. Parties  
17 are encouraged to designate only those portions of the testimony  
18 necessary to present the issues raised on review, but if a party  
19 alleges that a finding of fact is not supported by evidence, the party  
20 should include in the record all evidence relevant to the disputed  
21 finding. Any other party may designate additional portions of the  
22 taped transcript relating to issues raised on review. A party may  
23 provide a written transcript of portions of the testimony at the  
24 party's own expense or apply to that court for an order requiring the  
25 party seeking review to pay for additional portions of the written  
26 transcript.

27       (c) Judicial review under this chapter shall without exception be  
28 of the governmental action together with its accompanying environmental  
29 determinations.

30       (7) Jurisdiction over the review of determinations under this  
31 chapter in an appeal before an agency or superior court shall upon  
32 consent of the parties be transferred in whole or part to the  
33 shorelines hearings board. The shorelines hearings board shall hear  
34 the matter and sign the final order expeditiously. The superior court  
35 shall certify the final order of the shorelines hearings board and said  
36 certified final order may only be appealed to an appellate court. In  
37 the case of an appeal under this chapter regarding a project or other  
38 matter that is also the subject of an appeal to the shorelines hearings  
39 board under chapter 90.58 RCW, the shorelines hearings board shall have



1 sole jurisdiction over both the appeal under this section and the  
2 appeal under chapter 90.58 RCW, shall consider them together, and shall  
3 issue a final order within one hundred eighty days as provided in RCW  
4 90.58.180.

5 (8) For purposes of this section and RCW 43.21C.080, the words  
6 "action", "decision", and "determination" mean substantive agency  
7 action including any accompanying procedural determinations under this  
8 chapter (except where the word "action" means "appeal" in RCW  
9 43.21C.080(2) and (3)). The word "action" in this section and RCW  
10 43.21C.080 does not mean a procedural determination by itself made  
11 under this chapter. The word "determination" includes any  
12 environmental document required by this chapter and state or local  
13 implementing rules. The word "agency" refers to any state or local  
14 unit of government. Except as provided in subsection (5) of this  
15 section, the word "appeal" refers to administrative, legislative, or  
16 judicial appeals.

17 (9) The court in its discretion may award reasonable attorney's  
18 fees of up to one thousand dollars in the aggregate to the prevailing  
19 party, including a governmental agency, on issues arising out of this  
20 chapter if the court makes specific findings that the legal position of  
21 a party is frivolous and without reasonable basis.

22 **Sec. 105.** RCW 43.21C.031 and 1983 c 117 s 1 are each amended to  
23 read as follows:

24 (1) An environmental impact statement (the detailed statement  
25 required by RCW 43.21C.030(2)(c)) shall be prepared on proposals for  
26 legislation and other major actions having a probable significant,  
27 adverse environmental impact. The environmental impact statement may  
28 be combined with the recommendation or report on the proposal or issued  
29 as a separate document. Actions categorically exempt under RCW  
30 43.21C.110(1)(a) do not require environmental review or the preparation  
31 of an environmental impact statement under this chapter. In a county,  
32 city, or town planning under RCW 36.70A.040, a planned action, as  
33 provided for in subsection (2) of this section, does not require a  
34 threshold determination or the preparation of an environmental impact  
35 statement under this chapter, but is subject to environmental review  
36 and mitigation as provided in this chapter.

37 An environmental impact statement is required to analyze only those  
38 probable adverse environmental impacts which are significant.

1 Beneficial environmental impacts may be discussed. The responsible  
2 official shall consult with agencies and the public to identify such  
3 impacts and limit the scope of an environmental impact statement. The  
4 subjects listed in RCW 43.21C.030(2)(c) need not be treated as separate  
5 sections of an environmental impact statement. Discussions of  
6 significant short-term and long-term environmental impacts, significant  
7 irrevocable commitments of natural resources, significant alternatives  
8 including mitigation measures, and significant environmental impacts  
9 which cannot be mitigated should be consolidated or included, as  
10 applicable, in those sections of an environmental impact statement  
11 where the responsible official decides they logically belong.

12 (2)(a) For purposes of this section, a planned action means one or  
13 more types of project action that:

14 (i) Are designated planned actions by an ordinance or resolution  
15 adopted by a county, city, or town planning under RCW 36.70A.040;

16 (ii) Have had the significant impacts adequately addressed in an  
17 environmental impact statement prepared in conjunction with (A) a  
18 comprehensive plan or subarea plan adopted under chapter 36.70A RCW, or  
19 (B) a fully contained community, a master planned resort, a master  
20 planned development, or a phased project;

21 (iii) Are subsequent or implementing projects for the proposals  
22 listed in (a)(ii) of this subsection;

23 (iv) Are located within an urban growth area, as defined in RCW  
24 36.70A.030;

25 (v) Are not essential public facilities, as defined in RCW  
26 36.70A.200; and

27 (vi) Are consistent with a comprehensive plan adopted under chapter  
28 36.70A RCW.

29 (b) A county, city, or town shall limit planned actions to certain  
30 types of development or to specific geographical areas that are less  
31 extensive than the jurisdictional boundaries of the county, city, or  
32 town and may limit a planned action to a time period identified in the  
33 environmental impact statement or the ordinance or resolution adopted  
34 under this subsection.

35 **Sec. 106.** RCW 43.21C.110 and 1983 c 117 s 7 are each amended to  
36 read as follows:

1 It shall be the duty and function of the department of ecology(~~(7~~  
2 ~~which may utilize proposed rules developed by the environmental policy~~  
3 ~~commission)):~~

4 (1) To adopt and amend thereafter rules of interpretation and  
5 implementation of this chapter (~~((the state environmental policy act of~~  
6 ~~1971))~~), subject to the requirements of chapter 34.05 RCW, for the  
7 purpose of providing uniform rules and guidelines to all branches of  
8 government including state agencies, political subdivisions, public and  
9 municipal corporations, and counties. The proposed rules shall be  
10 subject to full public hearings requirements associated with rule  
11 promulgation. Suggestions for modifications of the proposed rules  
12 shall be considered on their merits, and the department shall have the  
13 authority and responsibility for full and appropriate independent  
14 promulgation and adoption of rules, assuring consistency with this  
15 chapter as amended and with the preservation of protections afforded by  
16 this chapter. The rule making powers authorized in this section shall  
17 include, but shall not be limited to, the following phases of  
18 interpretation and implementation of this chapter (~~((the state~~  
19 ~~environmental policy act of 1971))~~):

20 (a) Categories of governmental actions which are not to be  
21 considered as potential major actions significantly affecting the  
22 quality of the environment, including categories pertaining to  
23 applications for water right permits pursuant to chapters 90.03 and  
24 90.44 RCW. The types of actions included as categorical exemptions in  
25 the rules shall be limited to those types which are not major actions  
26 significantly affecting the quality of the environment. The rules  
27 shall provide for certain circumstances where actions which potentially  
28 are categorically exempt require environmental review. An action that  
29 is determined to be categorically exempted under the rules adopted by  
30 the department may not be conditioned or denied under this chapter.

31 (b) Rules for criteria and procedures applicable to the  
32 determination of when an act of a branch of government is a major  
33 action significantly affecting the quality of the environment for which  
34 a detailed statement is required to be prepared pursuant to RCW  
35 43.21C.030.

36 (c) Rules and procedures applicable to the preparation of detailed  
37 statements and other environmental documents, including but not limited  
38 to rules for timing of environmental review, obtaining comments, data  
39 and other information, and providing for and determining areas of

1 public participation which shall include the scope and review of draft  
2 environmental impact statements.

3 (d) Scope of coverage and contents of detailed statements assuring  
4 that such statements are simple, uniform, and as short as practicable;  
5 statements are required to analyze only reasonable alternatives and  
6 probable adverse environmental impacts which are significant, and may  
7 analyze beneficial impacts.

8 (e) Rules and procedures for public notification of actions taken  
9 and documents prepared.

10 (f) Definition of terms relevant to the implementation of this  
11 chapter including the establishment of a list of elements of the  
12 environment. Analysis of environmental considerations under RCW  
13 43.21C.030(2) may be required only for those subjects listed as  
14 elements of the environment (or portions thereof). The list of  
15 elements of the environment shall consist of the "natural" and "built"  
16 environment. The elements of the built environment shall consist of  
17 public services and utilities (such as water, sewer, schools, fire and  
18 police protection), transportation, environmental health (such as  
19 explosive materials and toxic waste), and land and shoreline use  
20 (including housing, and a description of the relationships with land  
21 use and shoreline plans and designations, including population).

22 (g) Rules for determining the obligations and powers under this  
23 chapter of two or more branches of government involved in the same  
24 project significantly affecting the quality of the environment.

25 (h) Methods to assure adequate public awareness of the preparation  
26 and issuance of detailed statements required by RCW 43.21C.030(2)(c).

27 (i) To prepare rules for projects setting forth the time limits  
28 within which the governmental entity responsible for the action shall  
29 comply with the provisions of this chapter.

30 (j) Rules for utilization of a detailed statement for more than one  
31 action and rules improving environmental analysis of nonproject  
32 proposals and encouraging better interagency coordination and  
33 integration between this chapter and other environmental laws.

34 (k) Rules relating to actions which shall be exempt from the  
35 provisions of this chapter in situations of emergency.

36 (l) Rules relating to the use of environmental documents in  
37 planning and decision making and the implementation of the substantive  
38 policies and requirements of this chapter, including procedures for  
39 appeals under this chapter.

1       (m) Rules and procedures that provide for the integration of  
2 environmental review with project review as provided in section 103 of  
3 this act. The rules and procedures shall be jointly developed with the  
4 department of community, trade, and economic development and shall be  
5 applicable to the preparation of environmental documents for actions in  
6 counties, cities, and towns planning under RCW 36.70A.040. The rules  
7 and procedures shall also include criteria to analyze the consistency  
8 of project actions under RCW 43.21C.031(2), including planned actions,  
9 with development regulations adopted pursuant to chapter 36.70A RCW, or  
10 in the absence of applicable development regulations, the appropriate  
11 elements of a comprehensive plan or subarea plan adopted pursuant to  
12 chapter 36.70A RCW. Ordinances or procedures adopted by a county,  
13 city, or town to implement the provisions of section 103 of this act  
14 prior to the effective date of rules adopted pursuant to this  
15 subsection (1)(m) shall continue to be effective until the adoption of  
16 any new or revised ordinances or procedures that may be required. If  
17 any revisions are required as a result of rules adopted pursuant to  
18 this subsection (1)(m), those revisions shall be made within the time  
19 limits specified in RCW 43.21C.120.

20       (2) In exercising its powers, functions, and duties under this  
21 section, the department may:

22       (a) Consult with the state agencies and with representatives of  
23 science, industry, agriculture, labor, conservation organizations,  
24 state and local governments and other groups, as it deems advisable;  
25 and

26       (b) Utilize, to the fullest extent possible, the services,  
27 facilities, and information (including statistical information) of  
28 public and private agencies, organizations, and individuals, in order  
29 to avoid duplication of effort and expense, overlap, or conflict with  
30 similar activities authorized by law and performed by established  
31 agencies.

32       (3) Rules adopted pursuant to this section shall be subject to the  
33 review procedures of chapter 34.05 RCW (~~(34.05.538 and 34.05.240)~~).

34       **Sec. 107.** RCW 43.21C.080 and 1977 ex.s. c 278 s 1 are each amended  
35 to read as follows:

36       (1) Notice of any action taken by a governmental agency may be  
37 publicized by the acting governmental agency, the applicant for, or the  
38 proponent of such action, in substantially the form as set forth in

1 (~~subsection (3) of this section and in the following manner~~) rules  
2 adopted pursuant to RCW 43.21C.110:

3 (a) By publishing notice on the same day of each week for two  
4 consecutive weeks in a legal newspaper of general circulation in the  
5 area where the property which is the subject of the action is located;

6 (b) By filing notice of such action with the department of ecology  
7 at its main office in Olympia prior to the date of the last newspaper  
8 publication; and

9 (c) Except for those actions which are of a nonproject nature, by  
10 one of the following methods which shall be accomplished prior to the  
11 date of ~~((last))~~ first newspaper publication;

12 (i) Mailing to the latest recorded real property owners, as shown  
13 by the records of the county treasurer, who share a common boundary  
14 line with the property upon which the project is proposed through  
15 United States mail, first class, postage prepaid.

16 (ii) Posting of the notice in a conspicuous manner on the property  
17 upon which the project is to be constructed.

18 (2)~~((a))~~ Except as otherwise provided in RCW 43.21C.075(5)(a),  
19 any action to set aside, enjoin, review, or otherwise challenge any  
20 such governmental action or subsequent government action for which  
21 notice is given as provided in subsection (1) of this section on  
22 grounds of noncompliance with the provisions of this chapter shall be  
23 commenced within ~~((thirty))~~ twenty-one days from the date of last  
24 newspaper publication of the notice pursuant to subsection (1) of this  
25 section, or be barred(~~(:— PROVIDED, HOWEVER, That the time period~~  
26 ~~within which an action shall be commenced shall be ninety days (i) for~~  
27 ~~projects to be performed by a governmental agency or to be performed~~  
28 ~~under government contract, or (ii) for thermal power plant projects:~~  
29 ~~PROVIDED FURTHER, That))~~).

30 Any subsequent governmental action on the proposal for which notice  
31 has been given as provided in subsection (1) of this section shall not  
32 be set aside, enjoined, reviewed, or otherwise challenged on grounds of  
33 noncompliance with the provisions of RCW 43.21C.030(2)(a) through (h)  
34 unless there has been a substantial change in the proposal between the  
35 time of the first governmental action and the subsequent governmental  
36 action that is likely to have adverse environmental impacts beyond the  
37 range of impacts previously analyzed, or unless the action now being  
38 considered was identified in an earlier detailed statement or

1 declaration of nonsignificance as being one which would require further  
2 environmental evaluation.

3 ~~((b) Any action to challenge a subsequent governmental action~~  
4 ~~based upon any provisions of this chapter shall be commenced within~~  
5 ~~thirty days from the date of last newspaper publication of the~~  
6 ~~subsequent governmental action except (i) for projects to be performed~~  
7 ~~by a governmental agency or to be performed under governmental~~  
8 ~~contract, or (ii) for thermal power plant projects which shall be~~  
9 ~~challenged within ninety days from the date of last newspaper~~  
10 ~~publication of the subsequent governmental action, or be barred.~~

11 ~~(3) The form for such notice of action shall be issued by the~~  
12 ~~department of ecology and shall be made available by the governmental~~  
13 ~~agency taking an action subject to being publicized pursuant to this~~  
14 ~~section, by the county auditor, and/or the city clerk to the project~~  
15 ~~applicant or proposer. The form of such notice shall be substantially~~  
16 ~~as follows:~~

17 NOTICE OF ACTION BY

18 ~~.....~~  
19 ~~(Government agency or entity)~~

20 Pursuant to the provisions of chapter 43.21C RCW, notice is hereby  
21 given that:

22 The ~~..... (Government agency or entity) did on~~  
23 ~~..... (date), take the action described below.~~

24 Any action to set aside, enjoin, review, or otherwise challenge  
25 such action on the grounds of noncompliance with the provisions of  
26 chapter 43.21C RCW (State Environmental Policy Act) shall be commenced  
27 within ~~..... days or be barred.~~

28 The action taken by ~~..... (Government agency or~~  
29 ~~entity), notice of which is hereby given, was as follows:~~

30 (1) ~~..... (Here insert description of action taken such~~  
31 ~~as: Adoption Ordinance No. ....; Issued Building Permit; Approved~~  
32 ~~preliminary (or final) plat, etc.)~~

33 (2) ~~..... (Here insert brief description of the~~  
34 ~~complete project or proposal.)~~

35 (3) Said action pertained to property commonly known as:  
36 ~~.....~~  
37 ~~.....~~

1 .....  
2 .....  
3 ~~(Sufficient description to locate property, but complete legal~~  
4 ~~description not required)~~  
5 ~~(4) Pertinent documents may be examined during regular business~~  
6 ~~hours at the office of: ..... located at:~~  
7 .....  
8 ~~(Location, including room number)~~  
9 .....  
10 ~~(Name of government agency, proponent, or applicant giving notice)~~  
11 ~~Filed by .....)~~  
12 ~~(Signature of individual and capacity in which such individual is~~  
13 ~~signing))~~

14 NEW SECTION. **Sec. 108.** A new section is added to chapter 36.70A  
15 RCW to read as follows:

16 (1) In designating and protecting critical areas under this  
17 chapter, counties and cities shall include the best available science  
18 in developing policies and development regulations to protect the  
19 functions and values of critical areas. In addition, counties and  
20 cities shall give special consideration to conservation or protection  
21 measures necessary to preserve or enhance anadromous fisheries.

22 (2) If it determines that advice from scientific or other experts  
23 is necessary or will be of substantial assistance in reaching its  
24 decision, a growth management hearings board may retain scientific or  
25 other expert advice to assist in reviewing a petition under RCW  
26 36.70A.290 that involves critical areas.

27 **Sec. 109.** RCW 36.70A.140 and 1990 1st ex.s. c 17 s 14 are each  
28 amended to read as follows:

29 Each county and city that is required or chooses to plan under RCW  
30 36.70A.040 shall establish and broadly disseminate to the public a  
31 public participation program identifying procedures providing for early  
32 and continuous public participation in the development and amendment of  
33 comprehensive land use plans and development regulations implementing  
34 such plans. The procedures shall provide for broad dissemination of  
35 proposals and alternatives, opportunity for written comments, public  
36 meetings after effective notice, provision for open discussion,  
37 communication programs, information services, and consideration of and



1 response to public comments. The public participation program and  
2 procedures shall apply to a response made by a county or city to a  
3 decision by a growth management hearings board under RCW 36.70A.300  
4 that the comprehensive plan or development regulations were not in  
5 compliance with this chapter. Errors in exact compliance with the  
6 established program and procedures shall not render the comprehensive  
7 land use plan or development regulations invalid if the spirit of the  
8 program and procedures is observed.

9 **Sec. 110.** RCW 36.70A.300 and 1991 sp.s. c 32 s 11 are each amended  
10 to read as follows:

11 (1) The board shall issue a final order within one hundred eighty  
12 days of receipt of the petition for review, or, when multiple petitions  
13 are filed, within one hundred eighty days of receipt of the last  
14 petition that is consolidated. Such a final order shall be based  
15 exclusively on whether or not a state agency, county, or city is in  
16 compliance with the requirements of this chapter, chapter 90.58 RCW as  
17 it relates to adoption or amendment of shoreline master programs, or  
18 chapter 43.21C RCW as it relates to plans, development regulations, and  
19 amendments thereto, adopted under RCW 36.70A.040 or chapter 90.58 RCW.  
20 In the final order, the board shall either: (a) Find that the state  
21 agency, county, or city is in compliance with the requirements of this  
22 chapter or chapter 90.58 RCW as it relates to the adoption or amendment  
23 of shoreline master programs; or (b) find that the state agency,  
24 county, or city is not in compliance with the requirements of this  
25 chapter or chapter 90.58 RCW as it relates to the adoption or amendment  
26 of shoreline master programs, in which case the board shall remand the  
27 matter to the affected state agency, county, or city and specify a  
28 reasonable time not in excess of one hundred eighty days within which  
29 the state agency, county, or city shall comply with the requirements of  
30 this chapter.

31 (2) A finding of noncompliance and an order of remand shall not  
32 affect the validity of comprehensive plans and development regulations  
33 during the period of remand, unless the board's final order also:

34 (a) Includes a determination, supported by findings of fact and  
35 conclusions of law, that the continued validity of the plan or  
36 regulation would substantially interfere with the fulfillment of the  
37 goals of this chapter; and

1 (b) Specifies the particular part or parts of the plan or  
2 regulation that are determined to be invalid, and the reasons for their  
3 invalidity.

4 (3) A determination of invalidity shall:

5 (a) Be prospective in effect and shall not extinguish rights that  
6 vested under state or local law before the date of the board's order;  
7 and

8 (b) Subject any development application that would otherwise vest  
9 after the date of the board's order to the legislation that both is  
10 enacted in response to the order of remand and determined by the board  
11 pursuant to RCW 36.70A.330 to comply with the requirements of this  
12 chapter.

13 (4) If the ordinance that adopts a plan or development regulation  
14 under this chapter includes a savings clause intended to revive prior  
15 policies or regulations in the event the new plan or regulations are  
16 determined to be invalid, the board shall determine under subsection  
17 (2) of this section whether the prior policies or regulations are valid  
18 during the period of remand.

19 (5) Any party aggrieved by a final decision of the hearings board  
20 may appeal the decision as provided in RCW 34.05.514 to ((Thurston  
21 county)) superior court within thirty days of the final order of the  
22 board.

23 **Sec. 111.** RCW 36.70A.330 and 1991 sp.s. c 32 s 14 are each amended  
24 to read as follows:

25 (1) After the time set for complying with the requirements of this  
26 chapter under RCW 36.70A.300(1)(b) has expired, or at an earlier time  
27 upon the motion of a county or city subject to a determination of  
28 invalidity under RCW 36.70A.300, the board(~~(, on its own motion or~~  
29 motion of the petitioner,)) shall set a hearing for the purpose of  
30 determining whether the state agency, county, or city is in compliance  
31 with the requirements of this chapter.

32 (2) The board shall conduct a hearing and issue a finding of  
33 compliance or noncompliance with the requirements of this chapter. A  
34 person with standing to challenge the legislation enacted in response  
35 to the board's final order may participate in the hearing along with  
36 the petitioner and the state agency, city, or county. A hearing under  
37 this subsection shall be given the highest priority of business to be  
38 conducted by the board, and a finding shall be issued within forty-five

1 days of the filing of the motion under subsection (1) of this section  
2 with the board.

3 (3) If the board finds that the state agency, county, or city is  
4 not in compliance, the board shall transmit its finding to the  
5 governor. The board may recommend to the governor that the sanctions  
6 authorized by this chapter be imposed. The board shall also reconsider  
7 its final order and decide:

8 (a) If a determination of invalidity has been made, whether such a  
9 determination should be rescinded or modified under the standards in  
10 RCW 36.70A.300(2); or

11 (b) If no determination of invalidity has been made, whether one  
12 now should be made under the standards in RCW 36.70A.300(2).

13 The board shall schedule additional hearings as appropriate  
14 pursuant to subsections (1) and (2) of this section.

15 NEW SECTION. Sec. 112. A new section is added to chapter 36.70A  
16 RCW to read as follows:

17 A city planning under RCW 36.70A.040 that operates public  
18 facilities and services shall serve within its service area if service  
19 is technically feasible and in compliance with local regulations.

20 Such a city that provides water or sewer service outside of its  
21 corporate boundaries shall not require, as a condition of providing  
22 water or sewer service that the property owner who has requested the  
23 water or sewer service agree to: (1) Lot sizes different from those  
24 authorized by the county or city within whose planning jurisdiction the  
25 property is located; or (2) other development or design requirements  
26 that are not required by the county or city within whose planning  
27 jurisdiction the property is located.

28 NEW SECTION. Sec. 113. A new section is added to chapter 36.70A  
29 RCW to read as follows:

30 Nothing in this chapter shall preclude public sanitary sewer  
31 systems and public domestic water systems designed for and serving  
32 rural uses in areas included within the rural area designated under RCW  
33 36.70A.070(5).

34 NEW SECTION. Sec. 114. A new section is added to chapter 36.70A  
35 RCW to read as follows:

1 Urban growth areas designated under RCW 36.70A.110 shall include  
2 transition areas that are designed to eventually have urban growth but  
3 which are temporarily zoned to lower densities and lower intensities of  
4 land use.

5 **Sec. 115.** RCW 36.70A.030 and 1994 c 307 s 2 and 1994 c 257 s 5 are  
6 each reenacted and amended to read as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Adopt a comprehensive land use plan" means to enact a new  
10 comprehensive land use plan or to update an existing comprehensive land  
11 use plan.

12 (2) "Agricultural land" means land primarily devoted to the  
13 commercial production of horticultural, viticultural, floricultural,  
14 dairy, apiary, vegetable, or animal products or of berries, grain, hay,  
15 straw, turf, seed, Christmas trees not subject to the excise tax  
16 imposed by RCW 84.33.100 through 84.33.140, finfish in upland  
17 hatcheries, or livestock, and that has long-term commercial  
18 significance for agricultural production.

19 (3) "City" means any city or town, including a code city.

20 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"  
21 means a generalized coordinated land use policy statement of the  
22 governing body of a county or city that is adopted pursuant to this  
23 chapter.

24 (5) "Critical areas" include the following areas and ecosystems:  
25 (a) Wetlands; (b) areas with a critical recharging effect on aquifers  
26 used for potable water; (c) fish and wildlife habitat conservation  
27 areas; (d) frequently flooded areas; and (e) geologically hazardous  
28 areas.

29 (6) "Department" means the department of community, trade, and  
30 economic development.

31 (7) For purposes of RCW 36.70A.065 and 36.70A.440, "development  
32 permit application" means any application for a development proposal  
33 for a use that could be permitted under a plan adopted pursuant to this  
34 chapter and is consistent with the underlying land use and zoning,  
35 including but not limited to building permits, subdivisions, binding  
36 site plans, planned unit developments, conditional uses or other  
37 applications pertaining to land uses, but shall not include rezones,

1 proposed amendments to comprehensive plans or the adoption or amendment  
2 of development regulations.

3 (8) "Development regulations" means any controls placed on  
4 development or land use activities by a county or city, including, but  
5 not limited to, zoning ordinances, official controls, planned unit  
6 development ordinances, subdivision ordinances, and binding site plan  
7 ordinances.

8 (9) "Forest land" means land primarily devoted to growing trees for  
9 long-term commercial timber production on land that can be economically  
10 and practically managed for such production, including Christmas trees  
11 subject to the excise tax imposed under RCW 84.33.100 through  
12 84.33.140, and that has long-term commercial significance. In  
13 determining whether forest land is primarily devoted to growing trees  
14 for long-term commercial timber production on land that can be  
15 economically and practically managed for such production, the following  
16 factors shall be considered: (a) The proximity of the land to urban,  
17 suburban, and rural settlements; (b) surrounding parcel size and the  
18 compatibility and intensity of adjacent and nearby land uses; (c) long-  
19 term local economic conditions that affect the ability to manage for  
20 timber production; and (d) the availability of public facilities and  
21 services conducive to conversion of forest land to other uses.

22 (10) "Geologically hazardous areas" means areas that because of  
23 their susceptibility to erosion, sliding, earthquake, or other  
24 geological events, are not suited to the siting of commercial,  
25 residential, or industrial development consistent with public health or  
26 safety concerns.

27 (11) "Long-term commercial significance" includes the growing  
28 capacity, productivity, and soil composition of the land for long-term  
29 commercial production, in consideration with the land's proximity to  
30 population areas, and the possibility of more intense uses of the land.

31 (12) "Minerals" include gravel, sand, and valuable metallic  
32 substances.

33 (13) "Public facilities" include streets, roads, highways,  
34 sidewalks, street and road lighting systems, traffic signals, domestic  
35 water systems, storm and sanitary sewer systems, parks and recreational  
36 facilities, and schools.

37 (14) "Public services" include fire protection and suppression, law  
38 enforcement, public health, education, recreation, environmental  
39 protection, and other governmental services.

1 (15) "Urban growth" refers to growth that makes intensive use of  
2 land for the location of buildings, structures, and impermeable  
3 surfaces to such a degree as to be incompatible with the primary use of  
4 such land for the production of food, other agricultural products, or  
5 fiber, or the extraction of mineral resources. When allowed to spread  
6 over wide areas, urban growth typically requires urban governmental  
7 services. "Characterized by urban growth" refers to land having urban  
8 growth located on it, or to land located in relationship to an area  
9 with urban growth on it as to be appropriate for urban growth.

10 (16) "Urban growth areas" means those areas designated by a county  
11 pursuant to RCW 36.70A.110.

12 (17) "Urban governmental services" include those governmental  
13 services historically and typically delivered by cities, and include  
14 storm and sanitary sewer systems, domestic water systems, street  
15 cleaning services, fire and police protection services, public transit  
16 services, and other public utilities associated with urban areas and  
17 normally not associated with nonurban areas.

18 (18) "Wetland" or "wetlands" means areas (~~(that are inundated or~~  
19 ~~saturated by surface water or ground water at a frequency and duration~~  
20 ~~sufficient to support, and that under normal circumstances do support,~~  
21 ~~a prevalence of vegetation typically adapted for life in saturated soil~~  
22 ~~conditions.— Wetlands generally include swamps, marshes, bogs, and~~  
23 ~~similar areas.— Wetlands do not include those artificial wetlands~~  
24 ~~intentionally created from nonwetland sites, including, but not limited~~  
25 ~~to, irrigation and drainage ditches, grass lined swales, canals,~~  
26 ~~detention facilities, wastewater treatment facilities, farm ponds, and~~  
27 ~~landscape amenities.— However, wetlands may include those artificial~~  
28 ~~wetlands intentionally created from nonwetland areas created to~~  
29 ~~mitigate conversion of wetlands, if permitted by the county or city))~~  
30 defined as wetlands under section 401 of the clean water act, 33 U.S.C.  
31 Sec. 1344. Wetlands do not include inadvertent wetlands  
32 unintentionally created after July 1, 1990, as a result of development  
33 activity, including the construction of roads, streets, or highways.

34 **Sec. 116.** RCW 90.58.020 and 1992 c 105 s 1 are each amended to  
35 read as follows:

36 The legislature finds that the shorelines of the state are among  
37 the most valuable and fragile of its natural resources and that there  
38 is great concern throughout the state relating to their utilization,

1 protection, restoration, and preservation. In addition it finds that  
2 ever increasing pressures of additional uses are being placed on the  
3 shorelines necessitating increased coordination in the management and  
4 development of the shorelines of the state. The legislature further  
5 finds that much of the shorelines of the state and the uplands adjacent  
6 thereto are in private ownership; that unrestricted construction on the  
7 privately owned or publicly owned shorelines of the state is not in the  
8 best public interest; and therefore, coordinated planning is necessary  
9 in order to protect the public interest associated with the shorelines  
10 of the state while, at the same time, recognizing and protecting  
11 private property rights consistent with the public interest. There is,  
12 therefor, a clear and urgent demand for a planned, rational, and  
13 concerted effort, jointly performed by federal, state, and local  
14 governments, to prevent the inherent harm in an uncoordinated and  
15 piecemeal development of the state's shorelines.

16 It is the policy of the state to provide for the management of the  
17 shorelines of the state by planning for and fostering all reasonable  
18 and appropriate uses. This policy is designed to insure the  
19 development of these shorelines in a manner which, while allowing for  
20 limited reduction of rights of the public in the navigable waters, will  
21 promote and enhance the public interest. This policy contemplates  
22 protecting against adverse effects to the public health, the land and  
23 its vegetation and wildlife, and the waters of the state and their  
24 aquatic life, while protecting generally public rights of navigation  
25 and corollary rights incidental thereto.

26 The legislature declares that the interest of all of the people  
27 shall be paramount in the management of shorelines of state-wide  
28 significance. The department, in adopting guidelines for shorelines of  
29 state-wide significance, and local government, in developing master  
30 programs for shorelines of state-wide significance, shall give  
31 preference to uses in the following order of preference which:

- 32 (1) Recognize and protect the state-wide interest over local  
33 interest;
- 34 (2) Preserve the natural character of the shoreline;
- 35 (3) Result in long term over short term benefit;
- 36 (4) Protect the resources and ecology of the shoreline;
- 37 (5) Increase public access to publicly owned areas of the  
38 shorelines;

1 (6) Increase recreational opportunities for the public in the  
2 shoreline;

3 (7) Provide for any other element as defined in RCW 90.58.100  
4 deemed appropriate or necessary.

5 In the implementation of this policy the public's opportunity to  
6 enjoy the physical and aesthetic qualities of natural shorelines of the  
7 state shall be preserved to the greatest extent feasible consistent  
8 with the overall best interest of the state and the people generally.  
9 To this end uses shall be preferred which are consistent with control  
10 of pollution and prevention of damage to the natural environment, or  
11 are unique to or dependent upon use of the state's shoreline.  
12 Alterations of the natural condition of the shorelines of the state, in  
13 those limited instances when authorized, shall be given priority for  
14 single family residences and their appurtenant structures, ports,  
15 shoreline recreational uses including but not limited to parks,  
16 marinas, piers, and other improvements facilitating public access to  
17 shorelines of the state, industrial and commercial developments which  
18 are particularly dependent on their location on or use of the  
19 shorelines of the state and other development that will provide an  
20 opportunity for substantial numbers of the people to enjoy the  
21 shorelines of the state. Alterations of the natural condition of the  
22 shorelines and ((wetlands)) shorelands of the state shall be recognized  
23 by the department. Shorelines and ((wetlands)) shorelands of the state  
24 shall be appropriately classified and these classifications shall be  
25 revised when circumstances warrant regardless of whether the change in  
26 circumstances occurs through man-made causes or natural causes. Any  
27 areas resulting from alterations of the natural condition of the  
28 shorelines and ((wetlands)) shorelands of the state no longer meeting  
29 the definition of "shorelines of the state" shall not be subject to the  
30 provisions of chapter 90.58 RCW.

31 Permitted uses in the shorelines of the state shall be designed and  
32 conducted in a manner to minimize, insofar as practical, any resultant  
33 damage to the ecology and environment of the shoreline area and any  
34 interference with the public's use of the water.

35 **Sec. 117.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to  
36 read as follows:

37 As used in this chapter, unless the context otherwise requires, the  
38 following definitions and concepts apply:



1 (1) Administration:  
2 (a) "Department" means the department of ecology;  
3 (b) "Director" means the director of the department of ecology;  
4 (c) "Local government" means any county, incorporated city, or town  
5 which contains within its boundaries any lands or waters subject to  
6 this chapter;  
7 (d) "Person" means an individual, partnership, corporation,  
8 association, organization, cooperative, public or municipal  
9 corporation, or agency of the state or local governmental unit however  
10 designated;  
11 (e) "Hearing board" means the shoreline hearings board established  
12 by this chapter.  
13 (2) Geographical:  
14 (a) "Extreme low tide" means the lowest line on the land reached by  
15 a receding tide;  
16 (b) "Ordinary high water mark" on all lakes, streams, and tidal  
17 water is that mark that will be found by examining the bed and banks  
18 and ascertaining where the presence and action of waters are so common  
19 and usual, and so long continued in all ordinary years, as to mark upon  
20 the soil a character distinct from that of the abutting upland, in  
21 respect to vegetation as that condition exists on June 1, 1971, as it  
22 may naturally change thereafter, or as it may change thereafter in  
23 accordance with permits issued by a local government or the department:  
24 PROVIDED, That in any area where the ordinary high water mark cannot be  
25 found, the ordinary high water mark adjoining salt water shall be the  
26 line of mean higher high tide and the ordinary high water mark  
27 adjoining fresh water shall be the line of mean high water;  
28 (c) "Shorelines of the state" are the total of all "shorelines" and  
29 "shorelines of state-wide significance" within the state;  
30 (d) "Shorelines" means all of the water areas of the state,  
31 including reservoirs, and their associated ((wetlands)) shorelands,  
32 together with the lands underlying them; except (i) shorelines of  
33 state-wide significance; (ii) shorelines on segments of streams  
34 upstream of a point where the mean annual flow is twenty cubic feet per  
35 second or less and the wetlands associated with such upstream segments;  
36 and (iii) shorelines on lakes less than twenty acres in size and  
37 wetlands associated with such small lakes;  
38 (e) "Shorelines of state-wide significance" means the following  
39 shorelines of the state:

1 (i) The area between the ordinary high water mark and the western  
2 boundary of the state from Cape Disappointment on the south to Cape  
3 Flattery on the north, including harbors, bays, estuaries, and inlets;  
4 (ii) Those areas of Puget Sound and adjacent salt waters and the  
5 Strait of Juan de Fuca between the ordinary high water mark and the  
6 line of extreme low tide as follows:  
7 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,  
8 (B) Birch Bay--from Point Whitehorn to Birch Point,  
9 (C) Hood Canal--from Tala Point to Foulweather Bluff,  
10 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,  
11 and  
12 (E) Padilla Bay--from March Point to William Point;  
13 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and  
14 adjacent salt waters north to the Canadian line and lying seaward from  
15 the line of extreme low tide;  
16 (iv) Those lakes, whether natural, artificial, or a combination  
17 thereof, with a surface acreage of one thousand acres or more measured  
18 at the ordinary high water mark;  
19 (v) Those natural rivers or segments thereof as follows:  
20 (A) Any west of the crest of the Cascade range downstream of a  
21 point where the mean annual flow is measured at one thousand cubic feet  
22 per second or more,  
23 (B) Any east of the crest of the Cascade range downstream of a  
24 point where the annual flow is measured at two hundred cubic feet per  
25 second or more, or those portions of rivers east of the crest of the  
26 Cascade range downstream from the first three hundred square miles of  
27 drainage area, whichever is longer;  
28 (vi) Those ~~((wetlands))~~ shorelands associated with (i), (ii), (iv),  
29 and (v) of this subsection (2)(e);  
30 (f) "~~((Wetlands))~~ Shorelands" or "~~((wetland))~~ shoreland areas"  
31 means those lands extending landward for two hundred feet in all  
32 directions as measured on a horizontal plane from the ordinary high  
33 water mark; floodways and contiguous floodplain areas landward two  
34 hundred feet from such floodways; and all ~~((marshes, bogs, swamps,))~~  
35 wetlands and river deltas associated with the streams, lakes, and tidal  
36 waters which are subject to the provisions of this chapter; the same to  
37 be designated as to location by the department of ecology(~~(:—PROVIDED,~~  
38 ~~That))~~). Any county or city may determine that portion of a one-  
39 hundred-year-flood plain to be included in its master program as long

1 as such portion includes, as a minimum, the floodway and the adjacent  
2 land extending landward two hundred feet therefrom;

3 (g) "Floodway" means those portions of the area of a river valley  
4 lying streamward from the outer limits of a watercourse upon which  
5 flood waters are carried during periods of flooding that occur with  
6 reasonable regularity, although not necessarily annually, said floodway  
7 being identified, under normal condition, by changes in surface soil  
8 conditions or changes in types or quality of vegetative ground cover  
9 condition. The floodway shall not include those lands that can  
10 reasonably be expected to be protected from flood waters by flood  
11 control devices maintained by or maintained under license from the  
12 federal government, the state, or a political subdivision of the state;

13 (h) "Wetlands" means areas defined as wetlands under section 401 of  
14 the clean water act, 33 U.S.C. Sec. 1344. Wetlands do not include  
15 inadvertent wetlands unintentionally created after July 1, 1990, as a  
16 result of development activity, including the construction of roads,  
17 streets, or highways.

18 (3) Procedural terms:

19 (a) "Guidelines" means those standards adopted to implement the  
20 policy of this chapter for regulation of use of the shorelines of the  
21 state prior to adoption of master programs. Such standards shall also  
22 provide criteria to local governments and the department in developing  
23 master programs;

24 (b) "Master program" shall mean the comprehensive use plan for a  
25 described area, and the use regulations together with maps, diagrams,  
26 charts, or other descriptive material and text, a statement of desired  
27 goals, and standards developed in accordance with the policies  
28 enunciated in RCW 90.58.020;

29 (c) "State master program" is the cumulative total of all master  
30 programs approved or adopted by the department of ecology;

31 (d) "Development" means a use consisting of the construction or  
32 exterior alteration of structures; dredging; drilling; dumping;  
33 filling; removal of any sand, gravel, or minerals; bulkheading; driving  
34 of piling; placing of obstructions; or any project of a permanent or  
35 temporary nature which interferes with the normal public use of the  
36 surface of the waters overlying lands subject to this chapter at any  
37 state of water level;

38 (e) "Substantial development" shall mean any development of which  
39 the total cost or fair market value exceeds two thousand five hundred

1 dollars, or any development which materially interferes with the normal  
2 public use of the water or shorelines of the state; except that the  
3 following shall not be considered substantial developments for the  
4 purpose of this chapter:

5 (i) Normal maintenance or repair of existing structures or  
6 developments, including damage by accident, fire, or elements;

7 (ii) Construction of the normal protective bulkhead common to  
8 single family residences;

9 (iii) Emergency construction necessary to protect property from  
10 damage by the elements;

11 (iv) Construction and practices normal or necessary for farming,  
12 irrigation, and ranching activities, including agricultural service  
13 roads and utilities on ((~~wetlands~~)) shorelands, and the construction  
14 and maintenance of irrigation structures including but not limited to  
15 head gates, pumping facilities, and irrigation channels(~~(:—PROVIDED,~~  
16 ~~That))~~). A feedlot of any size, all processing plants, other activities  
17 of a commercial nature, alteration of the contour of the ((~~wetlands~~))  
18 shorelands by leveling or filling other than that which results from  
19 normal cultivation, shall not be considered normal or necessary farming  
20 or ranching activities. A feedlot shall be an enclosure or facility  
21 used or capable of being used for feeding livestock hay, grain, silage,  
22 or other livestock feed, but shall not include land for growing crops  
23 or vegetation for livestock feeding and/or grazing, nor shall it  
24 include normal livestock wintering operations;

25 (v) Construction or modification of navigational aids such as  
26 channel markers and anchor buoys;

27 (vi) Construction on ((~~wetlands~~)) shorelands by an owner, lessee,  
28 or contract purchaser of a single family residence for his own use or  
29 for the use of his family, which residence does not exceed a height of  
30 thirty-five feet above average grade level and which meets all  
31 requirements of the state agency or local government having  
32 jurisdiction thereof, other than requirements imposed pursuant to this  
33 chapter;

34 (vii) Construction of a dock, including a community dock, designed  
35 for pleasure craft only, for the private noncommercial use of the  
36 owner, lessee, or contract purchaser of single and multiple family  
37 residences, the cost of which does not exceed two thousand five hundred  
38 dollars;

1 (viii) Operation, maintenance, or construction of canals,  
2 waterways, drains, reservoirs, or other facilities that now exist or  
3 are hereafter created or developed as a part of an irrigation system  
4 for the primary purpose of making use of system waters, including  
5 return flow and artificially stored ground water for the irrigation of  
6 lands;

7 (ix) The marking of property lines or corners on state owned lands,  
8 when such marking does not significantly interfere with normal public  
9 use of the surface of the water;

10 (x) Operation and maintenance of any system of dikes, ditches,  
11 drains, or other facilities existing on September 8, 1975, which were  
12 created, developed, or utilized primarily as a part of an agricultural  
13 drainage or diking system(

14 ~~(xi) Any action commenced prior to December 31, 1982, pertaining to  
15 (A) the restoration of interim transportation services as may be  
16 necessary as a consequence of the destruction of the Hood Canal bridge,  
17 including, but not limited to, improvements to highways, development of  
18 park and ride facilities, and development of ferry terminal facilities  
19 until a new or reconstructed Hood Canal bridge is open to traffic; and  
20 (B) the reconstruction of a permanent bridge at the site of the  
21 original Hood Canal bridge)).~~

22 **Sec. 118.** RCW 90.58.050 and 1971 ex.s. c 286 s 5 are each amended  
23 to read as follows:

24 This chapter establishes a cooperative program of shoreline  
25 management between local government and the state. Local government  
26 shall have the primary responsibility for initiating the planning  
27 required by this chapter and administering the regulatory program  
28 consistent with the policy and provisions of this chapter. The  
29 department shall act primarily in a supportive and review capacity with  
30 ~~((primary))~~ an emphasis on providing assistance to local government and  
31 on insuring compliance with the policy and provisions of this chapter.

32 **Sec. 119.** RCW 90.58.060 and 1971 ex.s. c 286 s 6 are each amended  
33 to read as follows:

34 ~~(1) ((Within one hundred twenty days from June 1, 1971,))~~ The  
35 department shall ~~((submit to local governments proposed))~~ periodically  
36 review and adopt guidelines consistent with RCW 90.58.020, containing  
37 the elements specified in RCW 90.58.100 for:

1 (a) Development of master programs for regulation of the uses of  
2 shorelines; and

3 (b) Development of master programs for regulation of the uses of  
4 shorelines of state-wide significance.

5 (2) Before adopting or amending guidelines under this section, the  
6 department shall provide an opportunity for public review and comment  
7 as follows:

8 (a) The department shall mail copies of the proposal to all cities,  
9 counties, and federally recognized Indian tribes, and to any other  
10 person who has requested a copy, and shall publish the proposed  
11 guidelines in the Washington state register. Comments shall be  
12 submitted in writing to the department within sixty days from ((receipt  
13 of such proposed guidelines, local governments shall submit to the  
14 department in writing proposed changes, if any, and comments upon the  
15 proposed guidelines.

16 (3) ~~Thereafter and within one hundred twenty days from the~~  
17 ~~submission of such proposed guidelines to local governments, the~~  
18 ~~department, after review and consideration of the comments and~~  
19 ~~suggestions submitted to it, shall resubmit final proposed guidelines.~~

20 (4) ~~Within sixty days thereafter public hearings shall be held by))~~  
21 the date the proposal has been published in the register.

22 (b) The department ((in Olympia and Spokane, at which interested  
23 public and private parties shall have the opportunity)) shall hold at  
24 least four public hearings on the proposal in different locations  
25 throughout the state to provide a reasonable opportunity for residents  
26 in all parts of the state to present statements and views on the  
27 proposed guidelines. Notice of ((such)) the hearings shall be  
28 published at least once in each of the three weeks immediately  
29 preceding the hearing in one or more newspapers of general circulation  
30 in each county of the state. If an amendment to the guidelines  
31 addresses an issue limited to one geographic area, the number and  
32 location of hearings may be adjusted consistent with the intent of this  
33 subsection to assure all parties a reasonable opportunity to comment on  
34 the proposed amendment. The department shall accept written comments  
35 on the proposal during the sixty-day public comment period and for  
36 seven days after the final public hearing.

37 (c) At the conclusion of the public comment period, the department  
38 shall review the comments received and modify the proposal consistent

1 with the provisions of this chapter. The proposal shall then be  
2 published for adoption pursuant to the provisions of chapter 34.05 RCW.

3 ~~((5) Within ninety days following such public hearings, the~~  
4 ~~department at a public hearing to be held in Olympia shall adopt~~  
5 ~~guidelines.)) (3) The department may propose amendments to the~~  
6 guidelines not more than once each year. At least once every five  
7 years the department shall conduct a review of the guidelines pursuant  
8 to the procedures outlined in subsection (2) of this section.

9 **Sec. 120.** RCW 90.58.080 and 1974 ex.s. c 61 s 1 are each amended  
10 to read as follows:

11 Local governments ~~((are directed with regard to shorelines of the~~  
12 ~~state within their various jurisdictions as follows:~~

13 ~~(1) To complete within eighteen months after June 1, 1971, a~~  
14 ~~comprehensive inventory of such shorelines. Such inventory shall~~  
15 ~~include but not be limited to the general ownership patterns of the~~  
16 ~~lands located therein in terms of public and private ownership, a~~  
17 ~~survey of the general natural characteristics thereof, present uses~~  
18 ~~conducted therein and initial projected uses thereof;~~

19 ~~(2) To)) shall develop or amend, within twenty-four months after~~  
20 ~~the adoption of guidelines as provided in RCW 90.58.060, a master~~  
21 ~~program for regulation of uses of the shorelines of the state~~  
22 ~~consistent with the required elements of the guidelines adopted by the~~  
23 ~~department.~~

24 **Sec. 121.** RCW 90.58.090 and 1971 ex.s. c 286 s 9 are each amended  
25 to read as follows:

26 ~~(1) A master program(~~s or segments thereof~~)), segment of a master~~  
27 ~~program, or an amendment to a master program shall become effective~~  
28 ~~when (~~adopted or~~) approved by the department (~~as appropriate~~)).~~  
29 ~~Within the time period provided in RCW 90.58.080, each local government~~  
30 ~~shall have submitted a master program, either totally or by segments,~~  
31 ~~for all shorelines of the state within its jurisdiction to the~~  
32 ~~department for review and approval.~~

33 ~~(2) Upon receipt of a proposed master program or amendment, the~~  
34 ~~department shall:~~

35 ~~(a) Provide notice to and opportunity for written comment by all~~  
36 ~~interested parties of record as a part of the local government review~~  
37 ~~process for the proposal and to all persons, groups, and agencies that~~

1 have requested in writing notice of proposed master programs or  
2 amendments generally or for a specific area, subject matter, or issue.  
3 The comment period shall be at least thirty days, unless the department  
4 determines that the level of complexity or controversy involved  
5 supports a shorter period;

6 (b) In the department's discretion, conduct a public hearing during  
7 the thirty-day comment period in the jurisdiction proposing the master  
8 program or amendment;

9 (c) Within fifteen days after the close of public comment, request  
10 the local government to review the issues identified by the public,  
11 interested parties, groups, and agencies and provide a written response  
12 as to how the proposal addresses the identified issues;

13 (d) Within thirty days after receipt of the local government  
14 response pursuant to (c) of this subsection, make written findings and  
15 conclusions regarding the consistency of the proposal with the policy  
16 of RCW 90.58.020 and the applicable guidelines, provide a response to  
17 the issues identified in (c) of this subsection, and either approve the  
18 proposal as submitted, recommend specific changes necessary to make the  
19 proposal approvable, or deny approval of the proposal in those  
20 instances where no alteration of the proposal appears likely to  
21 accomplish the purposes for which it was submitted and the requirements  
22 of this chapter. The written findings and conclusions shall be  
23 provided to the local government, all interested persons, parties,  
24 groups, and agencies of record on the proposal;

25 (e) If the department recommends changes to the proposed master  
26 program or amendment, within thirty days after the department mails the  
27 written findings and conclusions to the local government, the local  
28 government may:

29 (i) Agree to the proposed changes. The receipt by the department  
30 of the written notice of agreement constitutes final action by the  
31 department approving the amendment; or

32 (ii) Submit an alternative proposal. If, in the opinion of the  
33 department, the alternative is consistent with the purpose and intent  
34 of the changes originally submitted by the department and with this  
35 chapter it shall approve the changes and provide written notice to all  
36 recipients of the written findings and conclusions. If the department  
37 determines the proposal is not consistent with the purpose and intent  
38 of the changes proposed by the department, the department may resubmit



1 the proposal for public and agency review pursuant to this section or  
2 reject the proposal.

3 ~~((1) As to those segments of the master program relating to~~  
4 ~~shorelines, they shall be approved by))~~

5 (3) The department shall approve the segment of a master program  
6 relating to shorelines unless it determines that the submitted segments  
7 are not consistent with the policy of RCW 90.58.020 and the applicable  
8 guidelines. ~~((If approval is denied, the department shall state within~~  
9 ~~ninety days from the date of submission in detail the precise facts~~  
10 ~~upon which that decision is based, and shall submit to the local~~  
11 ~~government suggested modifications to the program to make it consistent~~  
12 ~~with said policy and guidelines. The local government shall have~~  
13 ~~ninety days after it receives recommendations from the department to~~  
14 ~~make modifications designed to eliminate the inconsistencies and to~~  
15 ~~resubmit the program to the department for approval. Any resubmitted~~  
16 ~~program shall take effect when and in such form and content as is~~  
17 ~~approved by the department.~~

18 ~~(2) As to))~~ (4) The department shall approve those segments of the  
19 master program relating to shorelines of state-wide significance ~~((the~~  
20 ~~department shall have full authority following review and evaluation of~~  
21 ~~the submission by local government to develop and adopt an alternative~~  
22 ~~to the local government's proposal if in the department's opinion the~~  
23 ~~program submitted does not))~~ only after determining the program  
24 provides the optimum implementation of the policy of this chapter to  
25 satisfy the state-wide interest. ~~((If the submission by local~~  
26 ~~government is not approved, the department shall suggest modifications~~  
27 ~~to the local government within ninety days from receipt of the~~  
28 ~~submission. The local government shall have ninety days after it~~  
29 ~~receives said modifications to consider the same and resubmit a master~~  
30 ~~program to the department. Thereafter, the department shall adopt the~~  
31 ~~resubmitted program or, if the department determines that said program~~  
32 ~~does not provide for optimum implementation, it may develop and adopt~~  
33 ~~an alternative as hereinbefore provided.))~~ If the department does not  
34 approve a segment of a local government master program relating to a  
35 shoreline of state-wide significance, the department may develop and by  
36 rule adopt an alternative to the local government s proposal.

37 ~~((3))~~ (5) In the event a local government has not complied with  
38 the requirements of RCW 90.58.070 it may thereafter upon written notice  
39 to the department elect to adopt a master program for the shorelines

1 within its jurisdiction, in which event it shall comply with the  
2 provisions established by this chapter for the adoption of a master  
3 program for such shorelines.

4 Upon approval of such master program by the department it shall  
5 supersede such master program as may have been adopted by the  
6 department for such shorelines.

7 (6) A master program or amendment to a master program takes effect  
8 when and in such form as approved or adopted by the department. The  
9 department shall maintain a record of each master program, the action  
10 taken on any proposal for adoption or amendment of the master program,  
11 and any appeal of the department's action. The department's approved  
12 document of record constitutes the official master program.

13 **Sec. 122.** RCW 90.58.100 and 1992 c 105 s 2 are each amended to  
14 read as follows:

15 (1) The master programs provided for in this chapter, when adopted  
16 ((and)) or approved by the department(~~(, as appropriate,)~~) shall  
17 constitute use regulations for the various shorelines of the state. In  
18 preparing the master programs, and any amendments thereto, the  
19 department and local governments shall to the extent feasible:

20 (a) Utilize a systematic interdisciplinary approach which will  
21 insure the integrated use of the natural and social sciences and the  
22 environmental design arts;

23 (b) Consult with and obtain the comments of any federal, state,  
24 regional, or local agency having any special expertise with respect to  
25 any environmental impact;

26 (c) Consider all plans, studies, surveys, inventories, and systems  
27 of classification made or being made by federal, state, regional, or  
28 local agencies, by private individuals, or by organizations dealing  
29 with pertinent shorelines of the state;

30 (d) Conduct or support such further research, studies, surveys, and  
31 interviews as are deemed necessary;

32 (e) Utilize all available information regarding hydrology,  
33 geography, topography, ecology, economics, and other pertinent data;

34 (f) Employ, when feasible, all appropriate, modern scientific data  
35 processing and computer techniques to store, index, analyze, and manage  
36 the information gathered.

37 (2) The master programs shall include, when appropriate, the  
38 following:

1 (a) An economic development element for the location and design of  
2 industries, transportation facilities, port facilities, tourist  
3 facilities, commerce and other developments that are particularly  
4 dependent on their location on or use of the shorelines of the state;

5 (b) A public access element making provision for public access to  
6 publicly owned areas;

7 (c) A recreational element for the preservation and enlargement of  
8 recreational opportunities, including but not limited to parks,  
9 tidelands, beaches, and recreational areas;

10 (d) A circulation element consisting of the general location and  
11 extent of existing and proposed major thoroughfares, transportation  
12 routes, terminals, and other public utilities and facilities, all  
13 correlated with the shoreline use element;

14 (e) A use element which considers the proposed general distribution  
15 and general location and extent of the use on shorelines and adjacent  
16 land areas for housing, business, industry, transportation,  
17 agriculture, natural resources, recreation, education, public buildings  
18 and grounds, and other categories of public and private uses of the  
19 land;

20 (f) A conservation element for the preservation of natural  
21 resources, including but not limited to scenic vistas, aesthetics, and  
22 vital estuarine areas for fisheries and wildlife protection;

23 (g) An historic, cultural, scientific, and educational element for  
24 the protection and restoration of buildings, sites, and areas having  
25 historic, cultural, scientific, or educational values;

26 (h) An element that gives consideration to the state-wide interest  
27 in the prevention and minimization of flood damages; and

28 (i) Any other element deemed appropriate or necessary to effectuate  
29 the policy of this chapter.

30 (3) The master programs shall include such map or maps, descriptive  
31 text, diagrams and charts, or other descriptive material as are  
32 necessary to provide for ease of understanding.

33 (4) Master programs will reflect that state-owned shorelines of the  
34 state are particularly adapted to providing wilderness beaches,  
35 ecological study areas, and other recreational activities for the  
36 public and will give appropriate special consideration to same.

37 (5) Each master program shall contain provisions to allow for the  
38 varying of the application of use regulations of the program, including  
39 provisions for permits for conditional uses and variances, to insure

1 that strict implementation of a program will not create unnecessary  
2 hardships or thwart the policy enumerated in RCW 90.58.020. Any such  
3 varying shall be allowed only if extraordinary circumstances are shown  
4 and the public interest suffers no substantial detrimental effect. The  
5 concept of this subsection shall be incorporated in the rules adopted  
6 by the department relating to the establishment of a permit system as  
7 provided in RCW 90.58.140(3).

8 (6) Each master program shall contain standards governing the  
9 protection of single family residences and appurtenant structures  
10 against damage or loss due to shoreline erosion. The standards shall  
11 govern the issuance of substantial development permits for shoreline  
12 protection, including structural methods such as construction of  
13 bulkheads, and nonstructural methods of protection. The standards  
14 shall provide for methods which achieve effective and timely protection  
15 against loss or damage to single family residences and appurtenant  
16 structures due to shoreline erosion. The standards shall provide a  
17 preference for permit issuance for measures to protect single family  
18 residences occupied prior to January 1, 1992, where the proposed  
19 measure is designed to minimize harm to the shoreline natural  
20 environment.

21 **Sec. 123.** RCW 90.58.120 and 1989 c 175 s 182 are each amended to  
22 read as follows:

23 All rules, regulations, (~~((master programs,))~~) designations, and  
24 guidelines, issued by the department, and master programs and  
25 amendments adopted by the department pursuant to RCW 90.58.070(2) or  
26 90.58.090(4) shall be adopted or approved in accordance with the  
27 provisions of RCW 34.05.310 through 34.05.395 insofar as such  
28 provisions are not inconsistent with the provisions of this chapter.  
29 In addition:

30 (1) Prior to the (~~((approval or))~~) adoption by the department of a  
31 master program, or portion thereof pursuant to RCW 90.58.070(2) or  
32 90.58.090(4), at least one public hearing shall be held in each county  
33 affected by a program or portion thereof for the purpose of obtaining  
34 the views and comments of the public. Notice of each such hearing  
35 shall be published at least once in each of the three weeks immediately  
36 preceding the hearing in one or more newspapers of general circulation  
37 in the county in which the hearing is to be held.

1 (2) All guidelines, regulations, designations, or master programs  
2 adopted or approved under this chapter shall be available for public  
3 inspection at the office of the department or the appropriate county  
4 ((auditor)) and city ((clerk)). The terms "adopt" and "approve" for  
5 purposes of this section, shall include modifications and rescission of  
6 guidelines.

7 **Sec. 124.** RCW 90.58.140 and 1992 c 105 s 3 are each amended to  
8 read as follows:

9 (1) A development shall not be undertaken on the shorelines of the  
10 state unless it is consistent with the policy of this chapter and,  
11 after adoption or approval, as appropriate, the applicable guidelines,  
12 rules, or master program.

13 (2) A substantial development shall not be undertaken on shorelines  
14 of the state without first obtaining a permit from the government  
15 entity having administrative jurisdiction under this chapter.

16 A permit shall be granted:

17 (a) From June 1, 1971, until such time as an applicable master  
18 program has become effective, only when the development proposed is  
19 consistent with: (i) The policy of RCW 90.58.020; and (ii) after their  
20 adoption, the guidelines and rules of the department; and (iii) so far  
21 as can be ascertained, the master program being developed for the area;

22 (b) After adoption or approval, as appropriate, by the department  
23 of an applicable master program, only when the development proposed is  
24 consistent with the applicable master program and ~~((the provisions of))~~  
25 this chapter ((90.58-RCW)).

26 (3) The local government shall establish a program, consistent with  
27 rules adopted by the department, for the administration and enforcement  
28 of the permit system provided in this section. The administration of  
29 the system so established shall be performed exclusively by the local  
30 government.

31 (4) Except as otherwise specifically provided in subsection  
32 ~~((+13))~~ (11) of this section, the local government shall require  
33 notification of the public of all applications for permits governed by  
34 any permit system established pursuant to subsection (3) of this  
35 section by ensuring that ~~((+~~

36 ~~(a) A notice of such an application is published at least once a~~  
37 ~~week on the same day of the week for two consecutive weeks in a legal~~

1 newspaper of general circulation within the area in which the  
2 development is proposed; and

3 (~~(b) Additional~~) notice of (~~(such an)~~) the application is given by  
4 at least one of the following methods:

5 (~~((i))~~) (a) Mailing of the notice to the latest recorded real  
6 property owners as shown by the records of the county assessor within  
7 at least three hundred feet of the boundary of the property upon which  
8 the substantial development is proposed;

9 (~~((ii))~~) (b) Posting of the notice in a conspicuous manner on the  
10 property upon which the project is to be constructed; or

11 (~~((iii))~~) (c) Any other manner deemed appropriate by local  
12 authorities to accomplish the objectives of reasonable notice to  
13 adjacent landowners and the public.

14 The notices shall include a statement that any person desiring to  
15 submit written comments concerning an application, or desiring to  
16 receive (~~(a copy)~~) notification of the final (~~(order)~~) decision  
17 concerning an application as expeditiously as possible after the  
18 issuance of the (~~(order)~~) decision, may submit the comments or requests  
19 for (~~(orders)~~) decisions to the local government within thirty days of  
20 the last date the notice is to be published pursuant to (~~(subsection~~  
21 ~~(a) of)~~) this subsection. The local government shall forward, in a  
22 timely manner following the issuance of (~~(an order)~~) a decision, a copy  
23 of the (~~(order)~~) decision to each person who submits a request for the  
24 (~~(order)~~) decision.

25 If a hearing is to be held on an application, notices of such a  
26 hearing shall include a statement that any person may submit oral or  
27 written comments on an application at the hearing.

28 (5) The system shall include provisions to assure that construction  
29 pursuant to a permit will not begin or be authorized until (~~(thirty)~~)  
30 twenty-one days from the date the (~~(final order)~~) permit decision was  
31 filed as provided in subsection (6) of this section; or until all  
32 review proceedings are terminated if the proceedings were initiated  
33 within (~~(thirty)~~) twenty-one days from the date of filing as defined in  
34 subsection (6) of this section except as follows:

35 (a) In the case of any permit issued to the state of Washington,  
36 department of transportation, for the construction and modification of  
37 SR 90 (I-90) on or adjacent to Lake Washington, the construction may  
38 begin after thirty days from the date of filing, and the permits are  
39 valid until December 31, 1995;

1 (b) Construction may be commenced thirty days after the date the  
2 appeal of the board's decision is filed if a permit is granted by the  
3 local government and (i) the granting of the permit is appealed to the  
4 shorelines hearings board within (~~(thirty)~~) twenty-one days of the date  
5 of filing, (ii) the hearings board approves the granting of the permit  
6 by the local government or approves a portion of the substantial  
7 development for which the local government issued the permit, and (iii)  
8 an appeal for judicial review of the hearings board decision is filed  
9 pursuant to chapter 34.05 RCW(~~(, the permittee)~~)). The appellant may  
10 request, within ten days of the filing of the appeal with the court, a  
11 hearing before the court to determine whether construction (~~(may~~  
12 begin)) pursuant to the permit approved by the hearings board or to a  
13 revised permit issued pursuant to the order of the hearings board  
14 should not commence. If, at the conclusion of the hearing, the court  
15 finds that construction pursuant to such a permit would (~~(not)~~) involve  
16 a significant, irreversible damaging of the environment, the court  
17 (~~(may allow)~~) shall prohibit the permittee (~~(to begin)~~) from commencing  
18 the construction pursuant to the approved or revised permit (~~(as the~~  
19 court deems appropriate. ~~The court may require the permittee to post~~  
20 bonds, in the name of the local government that issued the permit,  
21 sufficient to remove the substantial development or to restore the  
22 environment if the permit is ultimately disapproved by the courts, or  
23 to alter the substantial development if the alteration is ultimately  
24 ordered by the courts)) until all review proceedings are final.  
25 Construction pursuant to a permit revised at the direction of the  
26 hearings board may begin only on that portion of the substantial  
27 development for which the local government had originally issued the  
28 permit, and construction pursuant to such a revised permit on other  
29 portions of the substantial development may not begin until after all  
30 review proceedings are terminated. In such a hearing before the court,  
31 the burden of proving whether the construction may involve significant  
32 irreversible damage to the environment and demonstrating whether such  
33 construction would or would not be appropriate is on the appellant;

34 (c) (~~(If a permit is granted by the local government and the~~  
35 ~~granting of the permit is appealed directly to the superior court for~~  
36 ~~judicial review pursuant to the proviso in RCW 90.58.180(1), the~~  
37 ~~permittee may request the court to remand the appeal to the shorelines~~  
38 ~~hearings board, in which case the appeal shall be so remanded and~~  
39 ~~construction pursuant to such a permit shall be governed by the~~

1 ~~provisions of subsection (b) of this subsection or may otherwise begin~~  
2 ~~after review proceedings before the hearings board are terminated if~~  
3 ~~judicial review is not thereafter requested pursuant to chapter 34.05~~  
4 ~~RCW;~~

5 (d)) If the permit is for a substantial development meeting the  
6 requirements of subsection ((+13)) (11) of this section, construction  
7 pursuant to that permit may not begin or be authorized until ((thirty))  
8 twenty-one days from the date the ((final order)) permit decision was  
9 filed as provided in subsection (6) of this section.

10 If a permittee begins construction pursuant to subsections (a),  
11 (b), or (c)((, or (d))) of this subsection, the construction is begun  
12 at the permittee's own risk. If, as a result of judicial review, the  
13 courts order the removal of any portion of the construction or the  
14 restoration of any portion of the environment involved or require the  
15 alteration of any portion of a substantial development constructed  
16 pursuant to a permit, the permittee is barred from recovering damages  
17 or costs involved in adhering to such requirements from the local  
18 government that granted the permit, the hearings board, or any  
19 appellant or intervener.

20 (6) Any ((ruling)) decision on an application for a permit under  
21 the authority of this section, whether it is an approval or a denial,  
22 shall, concurrently with the transmittal of the ruling to the  
23 applicant, be filed with the department and the attorney general. With  
24 regard to a permit other than a permit governed by subsection ((+12))  
25 (10) of this section, "date of filing" as used herein means the date of  
26 actual receipt by the department. With regard to a permit for a  
27 variance or a conditional use, "date of filing" means the date a  
28 decision of the department rendered on the permit pursuant to  
29 subsection ((+12)) (10) of this section is transmitted by the  
30 department to the local government. The department shall notify in  
31 writing the local government and the applicant of the date of filing.

32 (7) Applicants for permits under this section have the burden of  
33 proving that a proposed substantial development is consistent with the  
34 criteria that must be met before a permit is granted. In any review of  
35 the granting or denial of an application for a permit as provided in  
36 RCW 90.58.180 (1) and (2), the person requesting the review has the  
37 burden of proof.

38 (8) Any permit may, after a hearing with adequate notice to the  
39 permittee and the public, be rescinded by the issuing authority upon



1 the finding that a permittee has not complied with conditions of a  
2 permit. If the department is of the opinion that noncompliance exists,  
3 the department shall provide written notice to the local government and  
4 the permittee. If the department is of the opinion that the  
5 noncompliance continues to exist thirty days after the date of the  
6 notice, and the local government has taken no action to rescind the  
7 permit, the department may petition the hearings board for a rescission  
8 of the permit upon written notice of the petition to the local  
9 government and the permittee if the request by the department is made  
10 to the hearings board within fifteen days of the termination of the  
11 thirty-day notice to the local government.

12 (9) The holder of a certification from the governor pursuant to  
13 chapter 80.50 RCW shall not be required to obtain a permit under this  
14 section.

15 (10) ~~((A permit shall not be required for any development on  
16 shorelines of the state included within a preliminary or final plat  
17 approved by the applicable state agency or local government before  
18 April 1, 1971, if:~~

19 ~~(a) The final plat was approved after April 13, 1961, or the  
20 preliminary plat was approved after April 30, 1969; and~~

21 ~~(b) The development is completed within two years after June 1,  
22 1971.~~

23 ~~(11) The applicable state agency or local government is authorized  
24 to approve a final plat with respect to shorelines of the state  
25 included within a preliminary plat approved after April 30, 1969, and  
26 before April 1, 1971: PROVIDED, That any substantial development  
27 within the platted shorelines of the state is authorized by a permit  
28 granted pursuant to this section, or does not require a permit as  
29 provided in subsection (10) of this section, or does not require a  
30 permit because of substantial development occurred before June 1, 1971.~~

31 ~~(12))~~ Any permit for a variance or a conditional use by local  
32 government under approved master programs must be submitted to the  
33 department for its approval or disapproval.

34 ~~((13))~~ (11)(a) An application for a substantial development  
35 permit for a limited utility extension or for the construction of a  
36 bulkhead or other measures to protect a single family residence and its  
37 appurtenant structures from shoreline erosion shall be subject to the  
38 following procedures:

1 (i) The public comment period under subsection (4) of this section  
2 shall be twenty days. The notice provided under subsection (4) of this  
3 section shall state the manner in which the public may obtain a copy of  
4 the local government decision on the application no later than two days  
5 following its issuance;

6 (ii) The local government shall issue its decision to grant or deny  
7 the permit within twenty-one days of the last day of the comment period  
8 specified in (i) of this subsection; and

9 (iii) If there is an appeal of the decision to grant or deny the  
10 permit to the local government legislative authority, the appeal shall  
11 be finally determined by the legislative authority within thirty days.

12 (b) For purposes of this section, a limited utility extension means  
13 the extension of a utility service that:

14 (i) Is categorically exempt under chapter 43.21C RCW for one or  
15 more of the following: Natural gas, electricity, telephone, water, or  
16 sewer;

17 (ii) Will serve an existing use in compliance with this chapter;  
18 and

19 (iii) Will not extend more than twenty-five hundred linear feet  
20 within the shorelines of the state.

21 **Sec. 125.** RCW 90.58.180 and 1994 c 253 s 3 are each amended to  
22 read as follows:

23 (1) Any person aggrieved by the granting, denying, or rescinding of  
24 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek  
25 review from the shorelines hearings board by filing a ~~((request for the~~  
26 ~~same))~~ petition for review within ~~((thirty))~~ twenty-one days of the  
27 date of filing as defined in RCW 90.58.140(6).

28 ~~((Concurrently with))~~ Within seven days of the filing of any  
29 ~~((request))~~ petition for review with the board as provided in this  
30 section pertaining to a final ~~((order))~~ decision of a local government,  
31 the ~~((requestor))~~ petitioner shall ~~((file a copy))~~ serve copies of  
32 ~~((his or her request with))~~ the petition on the department and the  
33 office of the attorney general. ~~((If it appears to the department or~~  
34 ~~the attorney general that the requestor has valid reasons to seek~~  
35 ~~review, either the department or the attorney general may certify the~~  
36 ~~request within thirty days after its receipt to the shorelines hearings~~  
37 ~~board following which the board shall then, but not otherwise, review~~  
38 ~~the matter covered by the requestor. The failure to obtain such~~

1 ~~certification shall not preclude the requestor from obtaining a review~~  
2 ~~in the superior court under any right to review otherwise available to~~  
3 ~~the requestor.))~~ The department and the attorney general may intervene  
4 to protect the public interest and insure that the provisions of this  
5 chapter are complied with at any time within fifteen days from the date  
6 of the receipt by the department or the attorney general of a copy of  
7 the ~~((request))~~ petition for review filed pursuant to this section.  
8 The shorelines hearings board shall ~~((initially))~~ schedule review  
9 proceedings on ~~((such requests))~~ the petition for review without regard  
10 as to whether ~~((such requests have or have not been certified or as to~~  
11 ~~whether))~~ the period for the department or the attorney general to  
12 intervene has or has not expired~~((, unless such review is to begin~~  
13 ~~within thirty days of such scheduling. If at the end of the thirty day~~  
14 ~~period for certification neither the department nor the attorney~~  
15 ~~general has certified a request for review, the hearings board shall~~  
16 ~~remove the request from its review schedule))~~.

17 (2) The department or the attorney general may obtain review of any  
18 final ~~((order))~~ decision granting a permit, or granting or denying an  
19 application for a permit issued by a local government by filing a  
20 written ~~((request))~~ petition with the shorelines hearings board and the  
21 appropriate local government within ~~((thirty))~~ twenty-one days from the  
22 date the final ~~((order))~~ decision was filed as provided in RCW  
23 90.58.140(6).

24 (3) The review proceedings authorized in subsections (1) and (2) of  
25 this section are subject to the provisions of chapter 34.05 RCW  
26 pertaining to procedures in adjudicative proceedings. Judicial review  
27 of such proceedings of the shorelines hearings board is governed by  
28 chapter 34.05 RCW. The board shall issue its decision on the appeal  
29 authorized under subsections (1) and (2) of this section within one  
30 hundred eighty days after the date the petition is filed with the board  
31 or a petition to intervene is filed by the department or the attorney  
32 general, whichever is later. The time period may be waived by the  
33 parties or may be extended by the board for a period of thirty days  
34 upon a showing of good cause.

35 (4) ~~((A local government may appeal to the shorelines hearings~~  
36 ~~board))~~ Any person may appeal any rules, regulations, or guidelines  
37 adopted or approved by the department within thirty days of the date of  
38 the adoption or approval. The board shall make a final decision within  
39 sixty days following the hearing held thereon.

1       ~~((If the board))~~ (5) The board shall find the rule, regulation, or  
2 guideline to be valid and enter a final decision to that effect unless  
3 it determines that the rule, regulation, or guideline:

4       (a) Is clearly erroneous in light of the policy of this chapter; or

5       (b) Constitutes an implementation of this chapter in violation of  
6 constitutional or statutory provisions; or

7       (c) Is arbitrary and capricious; or

8       (d) Was developed without fully considering and evaluating all  
9 material submitted to the department ~~((by the local government))~~ during  
10 public review and comment; or

11       (e) Was not adopted in accordance with required procedures~~((?))~~.

12       (6) If the board makes a determination under subsection (5) (a)  
13 through (e) of this section, it shall enter a final decision declaring  
14 the rule, regulation, or guideline invalid, remanding the rule,  
15 regulation, or guideline to the department with a statement of the  
16 reasons in support of the determination, and directing the department  
17 to adopt, after a thorough consultation with the affected local  
18 government and any other interested party, a new rule, regulation, or  
19 guideline consistent with the board's decision. ((Unless the board  
20 makes one or more of the determinations as hereinbefore provided, the  
21 board shall find the rule, regulation, or guideline to be valid and  
22 enter a final decision to that effect.

23       ~~(5) Rules, regulations, and guidelines))~~ (7) A decision of the  
24 board on the validity of a rule, regulation, or guideline shall be  
25 subject to review in superior court, if authorized pursuant to ((RCW  
26 34.05.570(2). No review shall be granted by a superior court on  
27 petition from a local government unless the local government shall  
28 first have obtained review under subsection (4) of this section and the  
29 petition for court review is)) chapter 34.05 RCW. A petition for  
30 review of the decision of the shorelines hearings board on a rule,  
31 regulation, or guideline shall be filed within ((three months)) thirty  
32 days after the date of final decision by the shorelines hearings board.

33       **Sec. 126.** RCW 90.58.190 and 1989 c 175 s 184 are each amended to  
34 read as follows:

35       (1) ~~((The department and each local government shall periodically~~  
36 ~~review any master programs under its jurisdiction and make such~~  
37 ~~adjustments thereto as are necessary. Any adjustments proposed by a~~  
38 ~~local government to its master program shall be forwarded to the~~

1 ~~department for review. The department shall approve, reject, or~~  
2 ~~propose modification to the adjustment. If the department either~~  
3 ~~rejects or proposes modification to the master program adjustment, it~~  
4 ~~shall provide substantive written comments as to why the proposal is~~  
5 ~~being rejected or modified.))~~ The appeal of the department s decision  
6 to adopt a master program or amendment pursuant to RCW 90.58.070(2) or  
7 90.58.090(4) is governed by RCW 34.05.510 through 34.05.598.

8 (2)(a) The department's decision to approve, reject, or modify a  
9 proposed master program or amendment adopted by a local government  
10 planning under RCW 36.70A.040 shall be appealed to the growth  
11 management hearings board with jurisdiction over the local government.  
12 The appeal shall be initiated by filing a petition as provided in RCW  
13 36.70A.250 through 36.70A.320.

14 (b) If the appeal to the growth management hearings board concerns  
15 shorelines, the growth management hearings board shall review the  
16 proposed master program or amendment for compliance with the  
17 requirements of this chapter and chapter 36.70A RCW, the policy of RCW  
18 90.58.020 and the applicable guidelines, and chapter 43.21C RCW as it  
19 relates to the adoption of master programs and amendments under chapter  
20 90.58 RCW.

21 (c) If the appeal to the growth management hearings board concerns  
22 a shoreline of state-wide significance, the board shall uphold the  
23 decision by the department unless the board, by clear and convincing  
24 evidence, determines that the decision of the department is  
25 inconsistent with the policy of RCW 90.58.020 and the applicable  
26 guidelines.

27 (d) The appellant has the burden of proof in all appeals to the  
28 growth management hearings board under this subsection.

29 (e) Any party aggrieved by a final decision of a growth management  
30 hearings board under this subsection may appeal the decision to  
31 superior court as provided in RCW 36.70A.300.

32 (3)(a) Except as provided in subsection (2) of this section, any  
33 local government not planning under RCW 36.70A.040 that is aggrieved by  
34 the department's decision to approve, reject, or modify ((a)) its  
35 proposed master program or master program ((adjustment)) amendment may  
36 appeal the department's decision by filing a petition to the shorelines  
37 hearings board within thirty days of the date of the department s  
38 written notice to the local government of the department s decision to

1 approve, reject, or modify a proposed master program or master program  
2 amendment as provided in RCW 90.58.090(2).

3 (b) In an appeal relating to shorelines, the shorelines hearings  
4 board shall review the proposed master program or master program  
5 ((adjustment)) amendment and, after full consideration of the  
6 presentations of the local government and the department, shall  
7 determine the validity of the local government's ((adjustment)) master  
8 program or amendment in light of the policy of RCW 90.58.020 and the  
9 applicable guidelines.

10 (c) In an appeal relating to shorelines of state-wide significance,  
11 the shorelines hearings board shall uphold the decision by the  
12 department unless ((a local government shall)) the board determines, by  
13 clear and convincing evidence ((and argument, persuade the board)) that  
14 the decision of the department is inconsistent with the policy of RCW  
15 90.58.020 and the applicable guidelines.

16 (d) Review by the shorelines hearings board shall be considered an  
17 adjudicative proceeding under chapter 34.05 RCW, the Administrative  
18 Procedure Act. The aggrieved local government shall have the burden of  
19 proof in all such reviews.

20 (e) Whenever possible, the review by the shorelines hearings board  
21 shall be heard within the county where the land subject to the proposed  
22 master program or master program ((adjustment)) amendment is primarily  
23 located. The department and any local government aggrieved by a final  
24 decision of the hearings board may appeal the decision to ((the))  
25 superior court ((of Thurston county)) as provided in chapter 34.05 RCW.

26 ((+3)) (4) A master program amendment shall become effective after  
27 the approval of the department or after the decision of the shorelines  
28 hearings board to uphold the master program or master program  
29 ((adjustment)) amendment, provided that the board may remand the master  
30 program or master program adjustment to the local government or the  
31 department for modification prior to the final adoption of the master  
32 program or master program ((adjustment)) amendment.

33 **Sec. 127.** RCW 34.05.461 and 1989 c 175 s 19 are each amended to  
34 read as follows:

35 (1) Except as provided in subsection (2) of this section:

36 (a) If the presiding officer is the agency head or one or more  
37 members of the agency head, the presiding officer may enter an initial

1 order if further review is available within the agency, or a final  
2 order if further review is not available;

3 (b) If the presiding officer is a person designated by the agency  
4 to make the final decision and enter the final order, the presiding  
5 officer shall enter a final order; and

6 (c) If the presiding officer is one or more administrative law  
7 judges, the presiding officer shall enter an initial order.

8 (2) With respect to agencies exempt from chapter 34.12 RCW or an  
9 institution of higher education, the presiding officer shall transmit  
10 a full and complete record of the proceedings, including such comments  
11 upon demeanor of witnesses as the presiding officer deems relevant, to  
12 each agency official who is to enter a final or initial order after  
13 considering the record and evidence so transmitted.

14 (3) Initial and final orders shall include a statement of findings  
15 and conclusions, and the reasons and basis therefor, on all the  
16 material issues of fact, law, or discretion presented on the record,  
17 including the remedy or sanction and, if applicable, the action taken  
18 on a petition for a stay of effectiveness. Any findings based  
19 substantially on credibility of evidence or demeanor of witnesses shall  
20 be so identified. Findings set forth in language that is essentially  
21 a repetition or paraphrase of the relevant provision of law shall be  
22 accompanied by a concise and explicit statement of the underlying  
23 evidence of record to support the findings. The order shall also  
24 include a statement of the available procedures and time limits for  
25 seeking reconsideration or other administrative relief. An initial  
26 order shall include a statement of any circumstances under which the  
27 initial order, without further notice, may become a final order.

28 (4) Findings of fact shall be based exclusively on the evidence of  
29 record in the adjudicative proceeding and on matters officially noticed  
30 in that proceeding. Findings shall be based on the kind of evidence on  
31 which reasonably prudent persons are accustomed to rely in the conduct  
32 of their affairs. Findings may be based on such evidence even if it  
33 would be inadmissible in a civil trial. However, the presiding officer  
34 shall not base a finding exclusively on such inadmissible evidence  
35 unless the presiding officer determines that doing so would not unduly  
36 abridge the parties' opportunities to confront witnesses and rebut  
37 evidence. The basis for this determination shall appear in the order.

1 (5) Where it bears on the issues presented, the agency's  
2 experience, technical competency, and specialized knowledge may be used  
3 in the evaluation of evidence.

4 (6) If a person serving or designated to serve as presiding officer  
5 becomes unavailable for any reason before entry of the order, a  
6 substitute presiding officer shall be appointed as provided in RCW  
7 34.05.425. The substitute presiding officer shall use any existing  
8 record and may conduct any further proceedings appropriate in the  
9 interests of justice.

10 (7) The presiding officer may allow the parties a designated time  
11 after conclusion of the hearing for the submission of memos, briefs, or  
12 proposed findings.

13 (8)(a) Except as otherwise provided in (b) of this subsection,  
14 initial or final orders shall be served in writing within ninety days  
15 after conclusion of the hearing or after submission of memos, briefs,  
16 or proposed findings in accordance with subsection (7) of this section  
17 unless this period is waived or extended for good cause shown.

18 (b) This subsection does not apply to the final order of the  
19 shorelines hearings board on appeal under RCW 90.58.180(3).

20 (9) The presiding officer shall cause copies of the order to be  
21 served on each party and the agency.

22 **Sec. 128.** RCW 34.05.514 and 1994 c 257 s 23 are each amended to  
23 read as follows:

24 (1) Except as provided in subsection (2) of this section (~~and RCW~~  
25 ~~36.70A.300(3))~~), proceedings for review under this chapter shall be  
26 instituted by filing a petition in the superior court, at the  
27 petitioner's option, for (a) Thurston county, (b) the county of the  
28 petitioner's residence or principal place of business, or (c) in any  
29 county where the property owned by the petitioner and affected by the  
30 contested decision is located.

31 (2) For proceedings involving institutions of higher education, the  
32 petition shall be filed either in the county in which the principal  
33 office of the institution involved is located or in the county of a  
34 branch campus if the action involves such branch.

35 NEW SECTION. **Sec. 129.** A new section is added to chapter 36.70A  
36 RCW to read as follows:



1 For shorelines of the state, the goals and policies of the  
2 shoreline management act as set forth in RCW 90.58.020 are added as one  
3 of the goals of this chapter as set forth in RCW 36.70A.020. The  
4 comprehensive plan of a county or city planning under RCW 36.70A.040  
5 must also include a separate shorelines element consisting of the  
6 goals, policies, and use guidelines segments of the shoreline master  
7 program adopted under chapter 90.58 RCW. All other portions of the  
8 shoreline master program, including regulations, shall be considered  
9 part of the county's or city's development regulations.

10 The shoreline master program shall be adopted pursuant to the  
11 procedures of chapter 90.58 RCW rather than the procedures set forth in  
12 this chapter for the adoption of a comprehensive plan and development  
13 regulations, including approval by the department of ecology, except  
14 that an appeal from the actions by the department of ecology are  
15 appealable to the appropriate growth management hearings board rather  
16 than the shorelines hearings board.

17 **Sec. 130.** RCW 36.70A.130 and 1990 1st ex.s. c 17 s 13 are each  
18 amended to read as follows:

19 (1) Each comprehensive land use plan and development regulations  
20 shall be subject to continuing evaluation and review by the county or  
21 city that adopted them.

22 Any amendment or revision to a comprehensive land use plan shall  
23 conform to this chapter, and any change to development regulations  
24 shall be consistent with and implement the comprehensive plan.

25 (2)(a) Each county and city shall establish and broadly disseminate  
26 to the public a public participation program identifying procedures  
27 whereby proposed amendments or revisions of the comprehensive plan are  
28 considered by the governing body of the county or city no more  
29 frequently than once every year except under the following  
30 circumstances:

31 (i) The initial adoption of a subarea plan; and

32 (ii) The adoption or amendment of a shoreline master program under  
33 the procedures set forth in chapter 90.58 RCW.

34 (b) All proposals shall be considered by the governing body  
35 concurrently so the cumulative effect of the various proposals can be  
36 ascertained. However, after appropriate public participation, a county  
37 or city may adopt amendments or revisions to its comprehensive plan  
38 that conform with this chapter whenever an emergency exists or to

1 resolve an appeal of a comprehensive plan filed with the growth  
2 management hearings board or with the court.

3 (3) Each county that designates urban growth areas under RCW  
4 36.70A.110 shall review, at least every ten years, its designated urban  
5 growth area or areas, and the densities permitted within both the  
6 incorporated and unincorporated portions of each urban growth area. In  
7 conjunction with this review by the county, each city located within an  
8 urban growth area shall review the densities permitted within its  
9 boundaries, and the extent to which the urban growth occurring within  
10 the county has located within each city and the unincorporated portions  
11 of the urban growth areas. The county comprehensive plan designating  
12 urban growth areas, and the densities permitted in the urban growth  
13 areas by the comprehensive plans of the county and each city located  
14 within the urban growth areas, shall be revised to accommodate the  
15 urban growth projected to occur in the county for the succeeding  
16 twenty-year period.

17 **Sec. 131.** RCW 36.70A.290 and 1994 c 257 s 2 and 1994 c 249 s 26  
18 are each reenacted and amended to read as follows:

19 (1) All requests for review to a growth management hearings board  
20 shall be initiated by filing a petition that includes a detailed  
21 statement of issues presented for resolution by the board.

22 (2) All petitions relating to whether or not an adopted  
23 comprehensive plan, development regulation, or permanent amendment  
24 thereto, is in compliance with the goals and requirements of this  
25 chapter or chapter 90.58 or 43.21C RCW must be filed within sixty days  
26 after publication by the legislative bodies of the county or city.

27 (a) Except as provided in (c) of this subsection, the date of  
28 publication for a city shall be the date the city publishes the  
29 ordinance, or summary of the ordinance, adopting the comprehensive plan  
30 or development regulations, or amendment thereto, as is required to be  
31 published.

32 (b) Promptly after adoption, a county shall publish a notice that  
33 it has adopted the comprehensive plan or development regulations, or  
34 amendment thereto.

35 Except as provided in (c) of this subsection, for purposes of this  
36 section the date of publication for a county shall be the date the  
37 county publishes the notice that it has adopted the comprehensive plan  
38 or development regulations, or amendment thereto.

1        (c) For local governments planning under RCW 36.70A.040, promptly  
2 after approval or disapproval of a local government s shoreline master  
3 program or amendment thereto by the department of ecology as provided  
4 in RCW 90.58.090, the local government shall publish a notice that the  
5 shoreline master program or amendment thereto has been approved or  
6 disapproved by the department of ecology. For purposes of this  
7 section, the date of publication for the adoption or amendment of a  
8 shoreline master program is the date the local government publishes  
9 notice that the shoreline master program or amendment thereto has been  
10 approved or disapproved by the department of ecology.

11        (3) Unless the board dismisses the petition as frivolous or finds  
12 that the person filing the petition lacks standing, the board shall,  
13 within ten days of receipt of the petition, set a time for hearing the  
14 matter.

15        (4) The board shall base its decision on the record developed by  
16 the city, county, or the state and supplemented with additional  
17 evidence if the board determines that such additional evidence would be  
18 necessary or of substantial assistance to the board in reaching its  
19 decision.

20        (5) The board, shall consolidate, when appropriate, all petitions  
21 involving the review of the same comprehensive plan or the same  
22 development regulation or regulations.

23        **Sec. 132.** RCW 36.70A.320 and 1991 sp.s. c 32 s 13 are each amended  
24 to read as follows:

25        (1) Except as provided in subsection (2) of this section,  
26 comprehensive plans and development regulations, and amendments  
27 thereto, adopted under this chapter are presumed valid upon adoption.  
28 In any petition under this chapter, the board, after full consideration  
29 of the petition, shall determine whether there is compliance with the  
30 requirements of this chapter. In making its determination, the board  
31 shall consider the criteria adopted by the department under RCW  
32 36.70A.190(4). The board shall find compliance unless it finds by a  
33 preponderance of the evidence that the state agency, county, or city  
34 erroneously interpreted or applied this chapter.

35        (2) The shoreline element of a comprehensive plan and the  
36 applicable development regulations adopted by a county or city shall  
37 take effect as provided in chapter 90.58 RCW.

1       **Sec. 133.** RCW 82.02.090 and 1990 1st ex.s. c 17 s 48 are each  
2 amended to read as follows:

3       Unless the context clearly requires otherwise, the following  
4 definitions shall apply ~~((in RCW 82.02.050 through 82.02.090))~~  
5 throughout this chapter:

6       (1) "Development" means any proposed change in use of land for  
7 which review of environmental impacts is required under chapter 43.21C  
8 RCW, any proposed construction or expansion of a building, structure,  
9 or use, or any proposed change in use of a building or structure.

10       (2) "Development activity" means any construction or expansion of  
11 a building, structure, or use, any change in use of a building or  
12 structure, or any changes in the use of land, that creates additional  
13 demand and need for public facilities.

14       ~~((+2))~~ (3) "Development approval" means any written authorization  
15 from a county, city, or town which authorizes the commencement of  
16 development activity.

17       ~~((+3))~~ (4) "Environmental analysis" means review under chapter  
18 43.21C RCW of environmental impacts of an action required or authorized  
19 by chapter 36.70A RCW.

20       (5) "Environmental analysis fees" means a payment of money imposed  
21 on development as a condition of development approval to pay for  
22 environmental analysis needed to establish the system capacity  
23 projected to accommodate implementation of a comprehensive plan adopted  
24 under chapter 36.70A RCW.

25       (6) "Impact fee" means a payment of money imposed upon development  
26 as a condition of development approval to pay for public facilities  
27 needed to serve new growth and development, and that is reasonably  
28 related to the new development that creates additional demand and need  
29 for public facilities, that is a proportionate share of the cost of the  
30 public facilities, and that is used for facilities that reasonably  
31 benefit the new development. "Impact fee" does not include a  
32 reasonable permit or application fee.

33       ~~((+4))~~ (7) "Owner" means the owner of record of real property,  
34 although when real property is being purchased under a real estate  
35 contract, the purchaser shall be considered the owner of the real  
36 property if the contract is recorded.

37       ~~((+5))~~ (8) "Proportionate share" means that portion of the cost of  
38 public facility improvements that are reasonably related to the service  
39 demands and needs of new development.

1       (~~(6)~~) (9) "Project improvements" mean site improvements and  
2 facilities that are planned and designed to provide service for a  
3 particular development project and that are necessary for the use and  
4 convenience of the occupants or users of the project, and are not  
5 system improvements. No improvement or facility included in a capital  
6 facilities plan approved by the governing body of the county, city, or  
7 town shall be considered a project improvement.

8       (~~(7)~~) (10) "Public facilities" means the following capital  
9 facilities owned or operated by government entities: (a) Public  
10 streets and roads; (b) publicly owned parks, open space, and recreation  
11 facilities; (c) school facilities; and (d) fire protection facilities  
12 in jurisdictions that are not part of a fire district.

13       (~~(8)~~) (11) "Service area" means a geographic area defined by a  
14 county, city, town, or intergovernmental agreement in which a defined  
15 set of public facilities provide service to development within the  
16 area. Service areas shall be designated on the basis of sound planning  
17 or engineering principles.

18       (~~(9)~~) (12) "System capacity" means the capacity of a county,  
19 city, or town to accommodate new development determined by the limiting  
20 capacities of specific natural or built systems identified in the  
21 comprehensive plan adopted pursuant to RCW 36.70A.040.

22       (13) "System improvements" mean public facilities that are included  
23 in the capital facilities plan and are designed to provide service to  
24 service areas within the community at large, in contrast to project  
25 improvements.

26       NEW SECTION. Sec. 134. A new section is added to chapter 82.02  
27 RCW to read as follows:

28       Except only as expressly provided in RCW 67.28.180 and 67.28.190  
29 and in chapter 82.14 RCW, the state preempts the field of imposing  
30 taxes upon retail sales of tangible personal property, the use of  
31 tangible personal property, parimutuel wagering authorized pursuant to  
32 RCW 67.16.060, conveyances, and cigarettes, and no county, town, or  
33 other municipal subdivision has the right to impose taxes of that  
34 nature.

35       **Sec. 135.** RCW 82.02.020 and 1990 1st ex.s. c 17 s 42 are each  
36 amended to read as follows:

1       (~~Except only as expressly provided in RCW 67.28.180 and 67.28.190~~  
2 ~~and the provisions of chapter 82.14 RCW, the state preempts the field~~  
3 ~~of imposing taxes upon retail sales of tangible personal property, the~~  
4 ~~use of tangible personal property, parimutuel wagering authorized~~  
5 ~~pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county,~~  
6 ~~town, or other municipal subdivision shall have the right to impose~~  
7 ~~taxes of that nature.)) (1) Except as provided in ((RCW 82.02.050~~  
8 ~~through 82.02.090)) this chapter, ((~~no~~)) a county, city, town, or other  
9 municipal corporation shall not impose any tax, fee, or charge, either  
10 direct or indirect, on the construction or reconstruction of  
11 residential buildings, commercial buildings, industrial buildings, or  
12 on any other building or building space or appurtenance thereto, or on  
13 the development, subdivision, classification, or reclassification of  
14 land. However, this section does not preclude dedications of land or  
15 easements within the proposed development or plat which the county,  
16 city, town, or other municipal corporation can demonstrate are  
17 reasonably necessary as a direct result of the proposed development or  
18 plat to which the dedication of land or easement is to apply.~~

19       (2) This section does not prohibit voluntary agreements with  
20 ((~~counties, cities, towns~~)) a county, city, town, or other municipal  
21 corporation((~~s~~)) that allows a payment in lieu of a dedication of land  
22 or to mitigate a direct impact that has been identified as a  
23 consequence of a proposed development, subdivision, or plat. A local  
24 government shall not use such voluntary agreements for local off-site  
25 transportation improvements within the geographic boundaries of the  
26 area or areas covered by an adopted transportation program authorized  
27 by chapter 39.92 RCW. Any such voluntary agreement is subject to the  
28 following provisions:

29       ((~~1~~)) (a) The payment shall be held in a reserve account and may  
30 only be expended to fund a capital improvement agreed upon by the  
31 parties to mitigate the identified, direct impact;

32       ((~~2~~)) (b) The payment shall be expended in all cases within five  
33 years of collection; and

34       ((~~3~~)) (c) Any payment not so expended shall be refunded with  
35 interest at the rate applied to judgments to the property owners of  
36 record at the time of the refund; however, if the payment is not  
37 expended within five years due to delay attributable to the developer,  
38 the payment shall be refunded without interest.

1       (~~No~~) (3) A county, city, town, or other municipal corporation  
2 shall not require any payment as part of such a voluntary agreement  
3 which the county, city, town, or other municipal corporation cannot  
4 establish is reasonably necessary as a direct result of the proposed  
5 development or plat.

6       (4)(a) Nothing in this section prohibits cities, towns, counties,  
7 or other municipal corporations from collecting reasonable fees from an  
8 applicant for a permit or other governmental approval to cover the cost  
9 to the city, town, county, or other municipal corporation of processing  
10 applications, inspecting and reviewing plans, or preparing detailed  
11 statements required by chapter 43.21C RCW.

12       (b) This section does not limit the existing authority of any  
13 county, city, town, or other municipal corporation to impose special  
14 assessments on property specifically benefitted thereby in the manner  
15 prescribed by law.

16       (c) Nothing in this section prohibits counties, cities, or towns  
17 from imposing or permits counties, cities, or towns to impose water,  
18 sewer, natural gas, drainage utility, and drainage system charges(~~(+  
19 PROVIDED, That)~~). No such charge (~~(shall)~~) may exceed the  
20 proportionate share of such utility or system's capital costs which the  
21 county, city, or town can demonstrate are attributable to the property  
22 being charged(~~(+ PROVIDED FURTHER, That)~~). These provisions shall not  
23 be interpreted to expand or contract any existing authority of  
24 counties, cities, or towns to impose such charges.

25       (d) Nothing in this section prohibits a transportation benefit  
26 district from imposing fees or charges authorized in RCW 36.73.120 nor  
27 prohibits the legislative authority of a county, city, or town from  
28 approving the imposition of such fees within a transportation benefit  
29 district.

30       (e) Nothing in this section prohibits counties, cities, or towns  
31 from imposing transportation impact fees authorized pursuant to chapter  
32 39.92 RCW.

33       (f) Nothing in this section prohibits counties, cities, or towns  
34 from requiring property owners to provide relocation assistance to  
35 tenants under RCW 59.18.440 and 59.18.450.

36       (5) This section does not apply to special purpose districts formed  
37 and acting pursuant to Titles 54, 56, 57, or 87 RCW, nor is the  
38 authority conferred by these titles affected.

1       **Sec. 136.** RCW 82.46.010 and 1994 c 272 s 1 are each amended to  
2 read as follows:

3       (1) The legislative authority of any county or city shall identify  
4 in the adopted budget the capital projects funded in whole or in part  
5 from the proceeds of the tax authorized in this section, and shall  
6 indicate that such tax is intended to be in addition to other funds  
7 that may be reasonably available for such capital projects.

8       (2) The legislative authority of any county or any city may impose  
9 an excise tax on each sale of real property in the unincorporated areas  
10 of the county for the county tax and in the corporate limits of the  
11 city for the city tax at a rate not exceeding one-quarter of one  
12 percent of the selling price. The revenues from this tax shall be used  
13 by any city or county with a population of five thousand or less and  
14 any city or county that does not plan under RCW 36.70A.040 for any  
15 capital purpose identified in a capital improvements plan and local  
16 capital improvements, including those listed in RCW 35.43.040.

17       After April 30, 1992, revenues generated from the tax imposed under  
18 this subsection in counties over five thousand population and cities  
19 over five thousand population that are required or choose to plan under  
20 RCW 36.70A.040 shall be used (~~solely~~):

21       (a) For financing capital projects specified in a capital  
22 facilities plan element of a comprehensive plan and housing relocation  
23 assistance under RCW 59.18.440 and 59.18.450; or

24       (b) For funding the cost of enhanced environmental analysis of  
25 comprehensive plans, subarea plans, and development regulations  
26 required under section 103 of this act.

27       (~~However,~~) (3) Revenues (a) pledged by such counties and cities  
28 to debt retirement prior to April 30, 1992, may continue to be used for  
29 that purpose until the original debt for which the revenues were  
30 pledged is retired, or (b) committed prior to April 30, 1992, by such  
31 counties or cities to a project may continue to be used for that  
32 purpose until the project is completed.

33       (~~(3)~~) (4) In lieu of imposing the tax authorized in RCW  
34 82.14.030(2), the legislative authority of any county or any city may  
35 impose an additional excise tax on each sale of real property in the  
36 unincorporated areas of the county for the county tax and in the  
37 corporate limits of the city for the city tax at a rate not exceeding  
38 one-half of one percent of the selling price.



1       (~~(4)~~) (5) Taxes imposed under this section shall be collected  
2 from persons who are taxable by the state under chapter 82.45 RCW upon  
3 the occurrence of any taxable event within the unincorporated areas of  
4 the county or within the corporate limits of the city, as the case may  
5 be.

6       (~~(5)~~) (6) Taxes imposed under this section shall comply with all  
7 applicable rules, regulations, laws, and court decisions regarding real  
8 estate excise taxes as imposed by the state under chapter 82.45 RCW.

9       (~~(6)~~) (7) As used in this section, "city" means any city or town  
10 and "capital project" means those public works projects of a local  
11 government for planning, acquisition, construction, reconstruction,  
12 repair, replacement, rehabilitation, or improvement of streets; roads;  
13 highways; sidewalks; street and road lighting systems; traffic signals;  
14 bridges; domestic water systems; storm and sanitary sewer systems;  
15 parks; recreational facilities; law enforcement facilities; fire  
16 protection facilities; trails; libraries; administrative and/or  
17 judicial facilities; river and/or waterway flood control projects by  
18 those jurisdictions that, prior to June 11, 1992, have expended funds  
19 derived from the tax authorized by this section for such purposes; and,  
20 until December 31, 1995, housing projects for those jurisdictions that,  
21 prior to June 11, 1992, have expended or committed to expend funds  
22 derived from the tax authorized by this section or the tax authorized  
23 by RCW 82.46.035 for such purposes.

24       NEW SECTION.   **Sec. 137.** A new section is added to chapter 36.70A  
25 RCW to read as follows:

26       The growth management planning and environmental review loan fund  
27 is hereby established in the state treasury. Moneys may be placed in  
28 the fund from the proceeds of bond sales, tax revenues, budget  
29 transfers, federal appropriations, gifts, or any other lawful source.  
30 Moneys in the fund may be spent only after appropriation. Moneys in  
31 the fund shall be used to make low-interest loans to counties and  
32 cities for the purposes set forth in section 103 of this act or RCW  
33 43.21C.031. Loans from the fund shall be made by loan agreement under  
34 chapter 39.69 RCW.

35       NEW SECTION.   **Sec. 138.** A new section is added to chapter 36.70A  
36 RCW to read as follows:

1 (1) The department of community, trade, and economic development  
2 shall provide management services for the fund created by section 137  
3 of this act. The department by rule shall establish procedures for  
4 fund management.

5 (2) A county or city applicant must be making substantial progress  
6 towards compliance with the requirements of chapter 36.70A RCW in order  
7 to qualify for financial assistance from the fund established pursuant  
8 to section 137 of this act. A county or city that is more than six  
9 months out of compliance with a requirement of this chapter is deemed  
10 not to be making substantial progress towards compliance.

11 (3) The department by loan agreement may permit a deferred payment  
12 on the principal repayment of any loan for a period not to exceed two  
13 years. Interest shall continue to accrue during this period.

14 NEW SECTION. **Sec. 139.** Capitalization of the growth management  
15 planning and environmental review loan fund shall be made by:

16 (1) A transfer of four million dollars from the public works  
17 assistance account; and

18 (2) A transfer of two million dollars from the transportation fund.

19 NEW SECTION. **Sec. 140.** A new section is added to chapter 35.22  
20 RCW to read as follows:

21 A first class city may directly contract with the owner of real  
22 estate that is proposed to be developed, or with the developer of the  
23 real estate, without following competitive bidding procedures under RCW  
24 35.22.620 to construct or improve transportation improvements, sanitary  
25 sewer facilities, storm sewer facilities, and water facilities, that  
26 will in whole or in part serve or be used by the proposed development.  
27 Any work, construction, alteration, repair, or improvement, other than  
28 ordinary maintenance, that is performed by the owner or developer under  
29 this contract shall comply with the provisions of chapter 39.12 RCW.

30 NEW SECTION. **Sec. 141.** A new section is added to chapter 35.23  
31 RCW to read as follows:

32 A second class city or town may directly contract with the owner of  
33 real estate that is proposed to be developed, or with the developer of  
34 the real estate, without following competitive bidding procedures under  
35 RCW 35.23.352 to construct or improve transportation improvements,  
36 sanitary sewer facilities, storm sewer facilities, and water

1 facilities, that will in whole or in part serve or be used by the  
2 proposed development. Any work, construction, alteration, repair, or  
3 improvement, other than ordinary maintenance, that is performed by the  
4 owner or developer under this contract shall comply with the provisions  
5 of chapter 39.12 RCW.

6 NEW SECTION. **Sec. 142.** A new section is added to chapter 35.43  
7 RCW to read as follows:

8 A city, town, or public corporation may directly contract with the  
9 owner of real estate that is proposed to be developed, or with the  
10 developer of the real estate, within a local improvement district or  
11 utility local improvement district, without following competitive  
12 bidding procedures under RCW 35.43.190 to construct or improve  
13 transportation improvements, sanitary sewer facilities, storm sewer  
14 facilities, and water facilities, that are proposed to be financed by  
15 special assessments imposed within the improvement district that will  
16 in whole or in part serve or be used by the proposed development. Any  
17 work, construction, alteration, repair, or improvement, other than  
18 ordinary maintenance, that is performed by the owner or developer under  
19 this contract shall comply with the provisions of chapter 39.12 RCW.

20 **Sec. 143.** RCW 35A.40.210 and 1989 c 11 s 8 are each amended to  
21 read as follows:

22 Procedures for any public work or improvement contracts or  
23 purchases for code cities shall be governed by the following statutes,  
24 as indicated:

25 (1) For code cities of twenty thousand population or over, RCW  
26 35.22.620 and section 140 of this act; and

27 (2) For code cities under twenty thousand population((?)), RCW  
28 35.23.352 and section 141 of this act.

29 NEW SECTION. **Sec. 144.** A new section is added to chapter 36.32  
30 RCW to read as follows:

31 A county may directly contract with the owner of real estate that  
32 is proposed to be developed, or with the developer of the real estate,  
33 without following competitive bidding procedures under RCW 36.32.250 to  
34 construct or improve sanitary sewer facilities, storm sewer facilities,  
35 and water facilities, that will in whole or in part serve or be used by  
36 the proposed development, including facilities that are financed by

1 special assessments imposed within a local improvement district or  
2 utility local improvement district created under chapter 36.94 RCW.  
3 Any work, construction, alteration, repair, or improvement, other than  
4 ordinary maintenance, that is performed by the owner or developer under  
5 this contract shall comply with the provisions of chapter 39.12 RCW.

6 NEW SECTION. **Sec. 145.** A new section is added to chapter 36.77  
7 RCW to read as follows:

8 A county may directly contract with the owner of real estate that  
9 is proposed to be developed, or with the developer of the real estate,  
10 without following competitive bidding procedures under this chapter to  
11 construct or improve transportation improvements that will in whole or  
12 in part serve or be used by the proposed development, including  
13 facilities that are financed by special assessments imposed within a  
14 road improvement district created under chapter 36.88 RCW. Any work,  
15 construction, alteration, repair, or improvement, other than ordinary  
16 maintenance, that is performed by the owner or developer under this  
17 contract shall comply with the provisions of chapter 39.12 RCW.

18 NEW SECTION. **Sec. 146.** A new section is added to chapter 56.08  
19 RCW to read as follows:

20 A sewer district may directly contract with the owner of real  
21 estate that is proposed to be developed, or with the developer of the  
22 real estate, without following competitive bidding procedures under RCW  
23 56.08.070 to construct or improve sanitary sewer facilities or storm  
24 sewer facilities, that will in whole or in part serve or be used by the  
25 proposed development, including facilities that are financed by special  
26 assessments imposed within a local improvement district or utility  
27 local improvement district created under chapter 56.20 RCW. Any work,  
28 construction, alteration, repair, or improvement, other than ordinary  
29 maintenance, that is performed by the owner or developer under this  
30 contract shall comply with the provisions of chapter 39.12 RCW.

31 NEW SECTION. **Sec. 147.** A new section is added to chapter 57.08  
32 RCW to read as follows:

33 A water district may directly contract with the owner of real  
34 estate that is proposed to be developed, or with the developer of the  
35 real estate, without following competitive bidding procedures under RCW  
36 57.08.050 to construct or improve water facilities that will in whole

1 or in part serve or be used by the proposed development, including  
2 facilities that are financed by special assessments imposed within a  
3 local improvement district or utility local improvement district  
4 created under chapter 57.16 RCW. Any work, construction, alteration,  
5 repair, or improvement, other than ordinary maintenance, that is  
6 performed by the owner or developer under this contract shall comply  
7 with the provisions of chapter 39.12 RCW.

8 NEW SECTION. **Sec. 148.** RCW 82.02.020, 82.02.050, 82.02.060,  
9 82.02.070, 82.02.080, 82.02.090, and 82.02.100 are each recodified as  
10 sections within a new chapter created in Title 36 RCW.

11 NEW SECTION. **Sec. 149.** RCW 90.58.145 and 1979 ex.s. c 84 s 4 are  
12 each repealed.

13 **PART II - PERMITTING**

14 NEW SECTION. **Sec. 201.** The legislature finds and declares the  
15 following:

16 (1) As the number of environmental laws and development regulations  
17 has increased for land uses and development, so has the number of  
18 required local land use permits, each with its own separate approval  
19 process.

20 (2) The increasing number of local and state land use permits and  
21 separate environmental review processes required by agencies has  
22 generated continuing potential for conflict, overlap, and duplication  
23 between the various permit and review processes.

24 (3) This regulatory burden has significantly added to the cost and  
25 time needed to obtain local and state land use permits and has made it  
26 difficult for the public to know how and when to provide timely  
27 comments on land use proposals that require multiple permits and have  
28 separate environmental review processes.

29 NEW SECTION. **Sec. 202.** Unless the context clearly requires  
30 otherwise, the definitions in this section apply throughout this  
31 chapter.

32 (1) "Closed record appeal" means an appeal to a local government  
33 body or officer, including the legislative body, following an open  
34 record hearing and a decision by the body or officer on a development

1 permit application when the appeal is on the record with no or limited  
2 new evidence or information allowed to be submitted and only appeal  
3 argument allowed.

4 (2) "Development permit" or "development permit application" means  
5 any land use or environmental permit or license required from a local  
6 government for a project action, including but not limited to building  
7 permits, subdivisions, binding site plans, planned unit developments,  
8 conditional uses, shoreline substantial development permits, and other  
9 land use applications, but does not include proposed amendments to  
10 comprehensive plans or the adoption or amendment of development  
11 regulations.

12 (3) "Development regulations" means the controls placed on  
13 development or land use activities by a local government, including,  
14 but not limited to, zoning ordinances, critical areas ordinances,  
15 shoreline master programs, official controls, planned unit development  
16 ordinances, subdivision ordinances, and binding site plan ordinances,  
17 together with any amendments, but does not include decisions to approve  
18 a development permit application, even though such decisions may be  
19 expressed in a resolution or ordinance of the legislative body of the  
20 local government.

21 (4) "Local government" means a county, city, or town.

22 (5) "Open record hearing" means a hearing conducted by a hearing  
23 body or officer of the local government that creates a record through  
24 testimony and submission of evidence and information, whether the  
25 hearing is open to members of the general public for purposes of  
26 hearing public comments prior to a decision on a development permit  
27 application or is limited to those filing an appeal of a staff  
28 decision.

29 NEW SECTION. **Sec. 203.** Not later than December 31, 1996, each  
30 local government that does not plan under RCW 36.70A.040 shall provide  
31 by ordinance or resolution for review of development permit  
32 applications to achieve the following objectives:

33 (1) Combine the environmental review process, both procedural and  
34 substantive, with the procedure for review of development permits;

35 (2) Except as provided in RCW 43.21C.075(3), provide for no more  
36 than one open record hearing and one closed record appeal; and

37 (3) Require a uniform twenty-one day appeal period for judicial  
38 appeals as provided in section 306 of this act.

1        NEW SECTION.    **Sec. 204.**    Not later than December 31, 1996, each  
2 local government planning under RCW 36.70A.040 shall establish by  
3 ordinance or resolution an integrated and consolidated development  
4 permit process that includes the following required elements:

5        (1) A notice of completion to the applicant as required by RCW  
6 36.70A.440 (as recodified by this act);

7        (2) A notice of application to the public and agencies with  
8 jurisdiction as required by section 208 of this act;

9        (3) With the exception of a determination of significance, which  
10 shall be issued in advance of the agency decision or recommendation on  
11 the project action as provided in chapter 43.21C RCW, a single report  
12 by the decision maker that combines the local government's threshold  
13 determination, if required under chapter 43.21C RCW, with the agency's  
14 decision or recommendation on all development permits included in the  
15 consolidated permit review and also includes any mitigation required  
16 pursuant to the development regulations or the agency's authority under  
17 RCW 43.21C.060;

18        (4) Except as provided in section 211 of this act, the  
19 consolidation into a single review process of all development permits  
20 requested by an applicant for part or all of a project action,  
21 including no more than one consolidated open record hearing before a  
22 single hearing body or officer;

23        (5) Except for the appeal of a determination of significance as  
24 provided in RCW 43.21C.075, if a local government elects to provide an  
25 appeal of its threshold determinations or development permit decisions,  
26 the local government shall provide for no more than one consolidated  
27 open record hearing before a single hearing body or officer. The local  
28 government need not provide for any further appeal. If a closed record  
29 appeal is provided, the appeal shall be on the record before a single  
30 decision-making body or officer;

31        (6) A notice of decision as required by section 210 of this act and  
32 issued within the time period provided in RCW 36.70A.065 (as recodified  
33 by this act) and section 207 of this act; and

34        (7) Any other provisions not inconsistent with the requirements of  
35 this chapter or chapter 43.21C RCW.

36        **Sec. 205.**    RCW 36.70A.440 and 1994 c 257 s 4 are each amended to  
37 read as follows:

1       (~~Each city and county~~) (1) Within twenty-eight days after  
2 receiving a development permit application, a local government planning  
3 pursuant to RCW 36.70A.040 shall(~~(, within twenty working days of~~  
4 ~~receiving a development permit application as defined in RCW~~  
5 ~~36.70A.030(7),~~) mail or provide in person a written (~~notice~~)  
6 determination to the applicant, stating either:

7       (a) That the application is complete; or

8       (b) That the application is incomplete and what is necessary to  
9 make the application complete.

10       (2)(a) An application shall be deemed complete under this section  
11 if the local government does not provide a written determination to the  
12 applicant that the application is incomplete as provided in subsection  
13 (1)(b) of this section.

14       (b) Within ten days after an applicant has submitted to a local  
15 government additional information identified by the local government as  
16 being necessary for a complete application, the local government shall  
17 notify the applicant whether the application is complete or what  
18 additional information is necessary.

19       (3) To the extent known by the (~~city or county~~) local government,  
20 the (~~notice~~) local government shall identify other agencies of local,  
21 state, or federal governments that may have jurisdiction over some  
22 aspect of the application.

23       **Sec. 206.** RCW 36.70A.065 and 1994 c 257 s 3 are each amended to  
24 read as follows:

25       Development regulations adopted pursuant to RCW 36.70A.040 shall  
26 establish time periods consistent with section 207 of this act for  
27 local government actions on specific development permit applications  
28 and provide timely and predictable procedures to determine whether a  
29 completed development permit application meets the requirements of  
30 those development regulations. Such development regulations shall  
31 specify the contents of a completed development permit application  
32 necessary for the application of such time periods and procedures.

33       NEW SECTION.   **Sec. 207.** (1) Except as otherwise provided in  
34 subsection (2) of this section, a local government planning under RCW  
35 36.70A.040 shall issue its notice of final decision within one hundred  
36 twenty days after the local government notifies the applicant for a  
37 project that the application is complete, as provided in RCW 36.70A.440



1 (as recodified by this act). In determining the number of days that  
2 have elapsed after the local government has notified the applicant that  
3 the application is complete, the following periods shall be excluded:

4 (a) Any period during which an environmental impact statement is  
5 being prepared following a determination of significance pursuant to  
6 chapter 43.21C RCW, if the local government by ordinance or resolution  
7 has established time periods for completion of environmental impact  
8 statements, or if the local government and the applicant in writing  
9 agree to a time period for completion of an environmental impact  
10 statement; and

11 (b) A period, not to exceed sixty days, to consider and decide  
12 closed record appeals, unless the parties voluntarily agree to extend  
13 the period.

14 (2) The time limits established by subsection (1) of this section  
15 do not apply if a development permit:

16 (a) Requires an amendment to the comprehensive plan or a  
17 development regulation;

18 (b) Involves a new fully contained community as provided in RCW  
19 36.70A.350, a master planned resort as provided in RCW 36.70A.360, or  
20 the siting of an essential public facility as provided in RCW  
21 36.70A.200; or

22 (c) Requires substantial revisions to the project proposal, in  
23 which case the time period shall start from the date at which the  
24 revised project application is determined to be complete under RCW  
25 36.70A.440 (as recodified by this act).

26 (3) Except for extraordinary circumstances, a project shall be  
27 deemed approved within one hundred twenty days after the local  
28 government notifies the applicant for a project that the application is  
29 complete, as provided in RCW 36.70A.440 (as recodified by this act),  
30 but not including time excluded under subsections (1) and (2) of this  
31 section.

32 (4) A development permit application is complete for purposes of  
33 this section when it meets the procedural submission requirements of  
34 the local government and is sufficient for continued processing even  
35 though additional information may be required or project modifications  
36 may be undertaken subsequently. The determination of completeness  
37 shall not preclude the local government from requesting additional  
38 information or studies either at the time of the notice of completeness

1 or subsequently if new information is required or substantial changes  
2 in the proposed action occur.

3 (5) The notice of completeness may include the following as  
4 optional information:

5 (a) A preliminary determination of those development regulations  
6 that will be used for project mitigation;

7 (b) A preliminary determination of consistency, as provided under  
8 section 101 of this act; or

9 (c) Other information the local government chooses to include.

10 (6) A local government may require the applicant for a development  
11 permit to designate a single person or entity to receive notice  
12 required by this section.

13 NEW SECTION. **Sec. 208.** (1) Not later than December 31, 1996, a  
14 local government planning under RCW 36.70A.040 shall provide a notice  
15 of application to the public and the departments and agencies with  
16 jurisdiction as provided in this section.

17 (2) The notice of application shall include the following:

18 (a) The date of application;

19 (b) The proposed project action and the development permits  
20 included in the application and, if applicable, any studies requested  
21 under RCW 36.70A.440 (as recodified by this act) or section 207 of this  
22 act;

23 (c) The identification of other development or related permits not  
24 included in the application to the extent known by the local  
25 government;

26 (d) A public comment period of not less than fourteen nor more than  
27 twenty-eight days following the date of notice of application, and  
28 statements of the right of any person to request a copy of the decision  
29 once made and any appeal rights;

30 (e) The date for open record hearing, if applicable and scheduled  
31 at the date of notice of the application;

32 (f) A statement of the preliminary determination, if one has been  
33 made at the time of notice, of those development regulations that will  
34 be used for project mitigation and of consistency as provided in  
35 section 101 of this act; and

36 (g) Any other information determined appropriate by the local  
37 government, including the optional information required in  
38 section 207(5) of this act.

1 (3) If an open record hearing is required for the requested  
2 development permits, the notice of application shall be provided at  
3 least fourteen days prior to the open record hearing.

4 (4) A local government shall use reasonable methods to give the  
5 notice of application to the public and agencies with jurisdiction and  
6 may use its existing notice procedures. A local government may use  
7 different types of notice for different categories of development  
8 permits or types or project actions. Examples of reasonable methods to  
9 inform the public are:

10 (a) Posting the property for site-specific proposals;

11 (b) Publishing notice in the newspaper of general circulation in  
12 the local government or general area where the proposal is located;

13 (c) Notifying public or private groups with known interest in a  
14 certain proposal or in the type of proposal being considered;

15 (d) Notifying the news media;

16 (e) Placing notices in appropriate regional or neighborhood  
17 newspapers or trade journals;

18 (f) Publishing notice in agency newsletters or sending notice to  
19 agency mailing lists, either general lists or lists for specific  
20 proposals or subject areas; and

21 (g) Mailing to neighboring property owners.

22 (5) A notice of application shall not be required for development  
23 permits that are categorically exempt under chapter 43.21C RCW, unless  
24 an open record hearing is required.

25 (6) The local government may not issue its threshold determination  
26 or issue a decision or recommendation on a development permit until  
27 expiration of the public comment period. Comments shall be as specific  
28 as possible. If an agency with jurisdiction or a member of the public  
29 does not respond with written comments within the public comment  
30 period, the local government shall assume that such agency or person  
31 has no objection to the proposed development permit if the procedures  
32 of this section have been met.

33 NEW SECTION. **Sec. 209.** (1) Each local government planning under  
34 RCW 36.70A.040 shall establish a permit review process that provides  
35 for the integrated and consolidated review and decision on two or more  
36 development permits relating to a proposed project action, including a  
37 single application review and approval process covering all development  
38 permits requested by an applicant for all or part of a project action

1 and a designated permit coordinator. If an applicant elects the  
2 consolidated permit review process, the notice of completion, notice of  
3 application, and notice of final decision must include all development  
4 permits being reviewed through the consolidated permit review process.

5 (2) Consolidated permit review may provide different procedures for  
6 different categories of development permits, but if a project action  
7 requires development permits from more than one category, the local  
8 government shall provide for consolidated permit review with a single  
9 open record hearing and no more than one closed record appeal. Each  
10 local government shall determine which development permits are subject  
11 to an open record hearing and a closed record appeal. Examples of  
12 categories of development permits include but are not limited to:

13 (a) Categorically exempt proposals, such as variances, lot boundary  
14 adjustments, and certain construction permits, which require no  
15 environmental review or public notice;

16 (b) Administrative permits that require environmental review, but  
17 no open record hearing except on appeal;

18 (c) Administrative permits that require a threshold determination  
19 and an open record hearing; and

20 (d) Permits that require environmental review and a decision by the  
21 local government legislative body.

22 (3) A local government is not required to provide for appeals. If  
23 provided, an appeal must be filed within fourteen days after notice of  
24 the decision being appealed. The applicant for a development permit is  
25 deemed to be a participant in any comment period, open record hearing,  
26 and closed record appeal.

27 (4) A local government may provide by ordinance or resolution for  
28 the same or a different decision maker or hearing body or officer for  
29 different categories of development permits. In the case of  
30 consolidated development permit review, the local government shall  
31 specify which decision makers shall make the decision or  
32 recommendation, conduct the hearing, or decide the appeal to ensure  
33 that consolidated permit review occurs as provided in this section.  
34 The consolidated permit review may combine an open record public  
35 hearing with an open record appeal hearing. In such cases, the local  
36 government by ordinance or resolution shall specify which development  
37 permits, if any, shall be subject to a closed record appeal.

1 (5) Each local government planning under RCW 36.70A.040 shall adopt  
2 procedures for administrative interpretation of its development  
3 regulations.

4 NEW SECTION. **Sec. 210.** A local government planning under RCW  
5 36.70A.040 shall provide a notice of decision, which may be a copy of  
6 the report, recommendation, or decision, to the applicant and to any  
7 person requesting notice of the decision prior to the rendering of the  
8 decision. The local government may publish or otherwise provide for  
9 additional notice of its decision.

10 NEW SECTION. **Sec. 211.** A local government by ordinance or  
11 resolution may exclude the following development permits from the  
12 provisions of RCW 36.70A.440 (as recodified by this act), 36.70A.065  
13 (as recodified by this act), sections 204, and 207 through 210 of this  
14 act:

15 (1) Variances, lot line or boundary adjustments, short subdivision  
16 approval, building and other construction permits categorically exempt  
17 from environmental review under chapter 43.21C RCW or similar  
18 administrative approvals; and

19 (2) Landmark designations, street vacations, or other approvals  
20 relating to the use of public areas or facilities, or other development  
21 permits that the local government by ordinance or resolution has  
22 determined present special circumstances that warrant a review process  
23 different from that provided in RCW 36.70A.440 (as recodified by this  
24 act), 36.70A.065 (as recodified by this act), sections 204, and 207  
25 through 210 of this act.

26 NEW SECTION. **Sec. 212.** A local government not planning under RCW  
27 36.70A.040 may incorporate some or all of the provisions of sections  
28 204 and 207 through 210 of this act and RCW 36.70A.065 and 36.70A.440  
29 (as recodified by this act) into its procedures for review of  
30 development permits or other project actions.

31 NEW SECTION. **Sec. 213.** (1) Each local government is encouraged to  
32 adopt further project review provisions to provide prompt, coordinated  
33 review and ensure accountability to applicants and the public,  
34 including expedited review for development permits for projects that

1 are consistent with adopted development regulations and within the  
2 capacity of system-wide infrastructure improvements.

3 (2) Nothing in this chapter is intended or shall be construed to  
4 prevent a local government from requiring by rule, ordinance, or  
5 resolution a preapplication conference or meeting, design review, or  
6 hearing on some or all proposed projects to obtain public comments on  
7 scoping or a draft environmental impact statement pursuant to chapter  
8 43.21C RCW and its applicable rules.

9 (3) Each local government is encouraged to develop a system of  
10 professional certification whereby qualified engineers or other  
11 professionals certify an application's compliance with adopted  
12 development regulations for the purpose of expediting or eliminating  
13 certain aspects of agency review of compliance with those regulations.

14 (4) Each local government shall adopt procedures to monitor and  
15 enforce permit decisions and conditions.

16 (5) Nothing in this chapter modifies any independent statutory  
17 authority for a government agency to appeal a development permit issued  
18 by a local government.

19 NEW SECTION. **Sec. 214.** A new section is added to chapter 64.40  
20 RCW to read as follows:

21 A local government is not liable for damages under this chapter due  
22 to the local government's failure to make a final decision within the  
23 time limits established in section 207 of this act.

24 **Sec. 215.** RCW 58.17.090 and 1981 c 293 s 5 are each amended to  
25 read as follows:

26 (1) Upon receipt of an application for preliminary plat approval  
27 the administrative officer charged by ordinance with responsibility for  
28 administration of regulations pertaining to platting and subdivisions  
29 shall provide public notice and set a date for a public hearing.  
30 Except as provided in section 208 of this act, at a minimum, notice of  
31 the hearing shall be given in the following manner:

32 ((+1)) (a) Notice shall be published not less than ten days prior  
33 to the hearing in a newspaper of general circulation within the county  
34 and a newspaper of general circulation in the area where the real  
35 property which is proposed to be subdivided is located; and

36 ((+2)) (b) Special notice of the hearing shall be given to  
37 adjacent landowners by any other reasonable method local authorities

1 deem necessary. Adjacent landowners are the owners of real property,  
2 as shown by the records of the county assessor, located within three  
3 hundred feet of any portion of the boundary of the proposed  
4 subdivision. If the owner of the real property which is proposed to be  
5 subdivided owns another parcel or parcels of real property which lie  
6 adjacent to the real property proposed to be subdivided, notice under  
7 this subsection (1)(b) shall be given to owners of real property  
8 located within three hundred feet of any portion of the boundaries of  
9 such adjacently located parcels of real property owned by the owner of  
10 the real property proposed to be subdivided.

11 (2) All hearings shall be public. All hearing notices shall  
12 include a description of the location of the proposed subdivision. The  
13 description may be in the form of either a vicinity location sketch or  
14 a written description other than a legal description.

15 **Sec. 216.** RCW 58.17.092 and 1988 c 168 s 12 are each amended to  
16 read as follows:

17 Any notice made under chapter 58.17 or 36.--- (sections 101, 201  
18 through 204, and 207 through 213 of this act) RCW that identifies  
19 affected property may identify this affected property without using a  
20 legal description of the property including, but not limited to,  
21 identification by an address, written description, vicinity sketch, or  
22 other reasonable means.

23 **Sec. 217.** RCW 58.17.100 and 1981 c 293 s 6 are each amended to  
24 read as follows:

25 If a city, town or county has established a planning commission or  
26 planning agency in accordance with state law or local charter, such  
27 commission or agency shall review all preliminary plats and make  
28 recommendations thereon to the city, town or county legislative body to  
29 assure conformance of the proposed subdivision to the general purposes  
30 of the comprehensive plan and to planning standards and specifications  
31 as adopted by the city, town or county. Reports of the planning  
32 commission or agency shall be advisory only: PROVIDED, That the  
33 legislative body of the city, town or county may, by ordinance, assign  
34 to such commission or agency, or any department official or group of  
35 officials, such administrative functions, powers and duties as may be  
36 appropriate, including the holding of hearings, and recommendations for  
37 approval or disapproval of preliminary plats of proposed subdivisions.

1 Such recommendation shall be submitted to the legislative body not  
2 later than fourteen days following action by the hearing body. Upon  
3 receipt of the recommendation on any preliminary plat the legislative  
4 body shall at its next public meeting set the date for the public  
5 meeting where it shall consider the recommendations of the hearing body  
6 and may adopt or reject the recommendations of such hearing body based  
7 on the record established at the public hearing. If, after considering  
8 the matter at a public meeting, the legislative body deems a change in  
9 the planning commission's or planning agency's recommendation approving  
10 or disapproving any preliminary plat is necessary, ~~((the change of the~~  
11 ~~recommendation shall not be made until))~~ the legislative body shall  
12 ~~((conduct a public hearing and thereupon))~~ adopt its own  
13 recommendations and approve or disapprove the preliminary plat. ~~((Such~~  
14 ~~public hearing may be held before a committee constituting a majority~~  
15 ~~of the legislative body. If the hearing is before a committee, the~~  
16 ~~committee shall report its recommendations on the matter to the~~  
17 ~~legislative body for final action.))~~

18 Every decision or recommendation made under this section shall be  
19 in writing and shall include findings of fact and conclusions to  
20 support the decision or recommendation.

21 A record of all public meetings and public hearings shall be kept  
22 by the appropriate city, town or county authority and shall be open to  
23 public inspection.

24 Sole authority to approve final plats, and to adopt or amend  
25 platting ordinances shall reside in the legislative bodies.

26 **Sec. 218.** RCW 58.17.330 and 1994 c 257 s 6 are each amended to  
27 read as follows:

28 (1) As an alternative to those provisions of this chapter requiring  
29 a planning commission to hear and issue recommendations for plat  
30 approval, the county or city legislative body may adopt a hearing  
31 examiner system and shall specify by ordinance the legal effect of the  
32 decisions made by the examiner. ~~((Except as provided in subsection (2)~~  
33 ~~of this section,))~~ The legal effect of such decisions shall include one  
34 of the following:

35 (a) The decision may be given the effect of a recommendation to the  
36 legislative body;



1 (b) The decision may be given the effect of an administrative  
2 decision appealable within a specified time limit to the legislative  
3 body; or

4 (c) The decision may be given the effect of a final decision of the  
5 legislative body.

6 The legislative authority shall prescribe procedures to be followed by  
7 a hearing examiner.

8 ~~(2) ((The legislative body shall specify the legal effect of a~~  
9 ~~hearing examiner's procedural determination under the state~~  
10 ~~environmental policy act, as defined in RCW 43.21C.075(3)(a). It may~~  
11 ~~have the effect under subsection (1) (a) or (b) of this section, or may~~  
12 ~~be given the effect of a final decision of the legislative body.~~

13 ~~(3))~~ Each final decision of a hearing examiner shall be in writing  
14 and shall include findings and conclusions, based on the record, to  
15 support the decision. Each final decision of a hearing examiner,  
16 unless a longer period is mutually agreed to by the applicant and the  
17 hearing examiner, shall be rendered within ten working days following  
18 conclusion of all testimony and hearings.

19 NEW SECTION. Sec. 219. The legislature finds that the lack of  
20 certainty in the approval of development projects can result in a waste  
21 of public and private resources, escalate housing costs for consumers  
22 and discourage the commitment to comprehensive planning which would  
23 make maximum efficient use of resources at the least economic cost to  
24 the public. Assurance to a development project applicant that upon  
25 government approval the project may proceed in accordance with existing  
26 policies and regulations, and subject to conditions of approval, all as  
27 set forth in a development agreement, will strengthen the public  
28 planning process, encourage private participation and comprehensive  
29 planning, and reduce the economic costs of development. Further, the  
30 lack of public facilities and services is a serious impediment to  
31 development of new housing and commercial uses. Project applicants and  
32 local governments may include provisions and agreements whereby  
33 applicants are reimbursed over time for financing public facilities.  
34 It is the intent of the legislature by sections 220 through 224 of this  
35 act to allow local governments and owners and developers of real  
36 property to enter into development agreements.

1        NEW SECTION.    **Sec. 220.**    A new section is added to chapter 36.70A  
2    RCW to read as follows:

3        (1) A county or city may enter into a development agreement with a  
4    person having ownership or control of real property within its  
5    jurisdiction. A city may enter into a development agreement for real  
6    property outside its boundaries as part of a proposed annexation or a  
7    service agreement. A development agreement must set forth the  
8    development standards and other provisions that shall apply to and  
9    govern and vest the development, use, and mitigation of the development  
10   of the real property for the duration specified in the agreement.

11       (2) Sections 219 through 222 of this act do not affect the validity  
12   of a contract rezone, concomitant agreement, annexation agreement, or  
13   other agreement in existence on the effective date of sections 219  
14   through 222 of this act, or adopted under separate authority, that  
15   includes some or all of the development standards provided in  
16   subsection (3) of this section.

17       (3) For the purposes of this section, "development standards"  
18   includes, but is not limited to:

19       (a) Project elements such as permitted uses, residential densities,  
20   and nonresidential densities and intensities or building sizes;

21       (b) The amount and payment of impact fees imposed or agreed to in  
22   accordance with chapter 36.-- RCW (the new chapter created in section  
23   148 of this act) or any other applicable provisions of state law, other  
24   financial contributions by the property owner, inspection fees, or  
25   dedications;

26       (c) Mitigation measures, development conditions, and other  
27   requirements under chapter 43.21C RCW;

28       (d) Design standards such as maximum heights, setbacks, drainage  
29   and water quality requirements, landscaping, and other development  
30   features;

31       (e) Affordable housing;

32       (f) Parks and open space preservation;

33       (g) Phasing;

34       (h) Review procedures and standards for implementing decisions;

35       (i) A build-out or vesting period for applicable standards; and

36       (j) Any other appropriate development requirement or procedure.

37       (4) The execution of a development agreement is a proper exercise  
38   of county and city police power and contract authority. A development  
39   agreement may obligate a party to fund or provide services,

1 infrastructure, or other facilities. A development agreement shall  
2 reserve authority to impose new or different regulations to the extent  
3 required by a serious threat to public health and safety.

4 NEW SECTION. **Sec. 221.** A new section is added to chapter 36.70A  
5 RCW to read as follows:

6 Unless amended or terminated, a development agreement is  
7 enforceable during its term by a party. A development agreement and  
8 the development standards in the agreement govern during the term of  
9 the agreement, or for all or that part of the build-out period  
10 specified in the agreement, and may not be subject to an amendment to  
11 a zoning ordinance or development standard or regulation or a new  
12 zoning ordinance or development standard or regulation adopted after  
13 the effective date of the agreement. A permit or approval issued by  
14 the county or city after the execution of the development agreement  
15 must be consistent with the development agreement.

16 NEW SECTION. **Sec. 222.** A new section is added to chapter 36.70A  
17 RCW to read as follows:

18 A development agreement may be recorded with the real property  
19 records of the county in which the property is located. During the  
20 term of the development agreement, the agreement is binding on and will  
21 inure to the benefit of the parties and their successors, including a  
22 city that assumes jurisdiction through incorporation or annexation of  
23 the area covering the property covered by the development agreement.

24 NEW SECTION. **Sec. 223.** A new section is added to chapter 36.70A  
25 RCW to read as follows:

26 A county or city shall only approve a development agreement by  
27 ordinance or resolution after a public hearing. The county or city  
28 legislative body or a planning commission, hearing examiner, or other  
29 body designated by the legislative body to conduct the public hearing  
30 may conduct the hearing. If the development agreement relates to a  
31 development permit application, the provisions of chapter 36.-- RCW  
32 (sections 301 through 314 of this act) shall apply to the appeal of the  
33 decision on the development agreement.

34 NEW SECTION. **Sec. 224.** Nothing in sections 219 through 223 of  
35 this act is intended to authorize local governments to impose impact

1 fees, inspection fees, or dedications or to require any other financial  
2 contributions or mitigation measures except as authorized in RCW  
3 82.02.020 (as recodified by this act) and as otherwise expressly  
4 authorized by other applicable provisions of state law.

5 **Sec. 225.** RCW 35.63.130 and 1994 c 257 s 8 are each amended to  
6 read as follows:

7 (1) As an alternative to those provisions of this chapter relating  
8 to powers or duties of the planning commission to hear and report on  
9 any proposal to amend a zoning ordinance, the legislative body of a  
10 city or county may adopt a hearing examiner system under which a  
11 hearing examiner or hearing examiners may hear and decide applications  
12 for amending the zoning ordinance when the amendment which is applied  
13 for is not of general applicability. In addition, the legislative body  
14 may vest in a hearing examiner the power to hear and decide those  
15 issues it believes should be reviewed and decided by a hearing  
16 examiner, including but not limited to:

17 (a) Applications for conditional uses, variances, subdivisions,  
18 shoreline permits, or any other class of applications for or pertaining  
19 to development of land or land use((s which the legislative body  
20 believes should be reviewed and decided by a hearing examiner));

21 (b) Appeals of administrative decisions or determinations; and

22 (c) Appeals of administrative decisions or determinations pursuant  
23 to chapter 43.21C RCW.

24 The legislative body shall prescribe procedures to be followed by  
25 the hearing examiner.

26 (2) Each city or county legislative body electing to use a hearing  
27 examiner pursuant to this section shall by ordinance specify the legal  
28 effect of the decisions made by the examiner. ~~((Except as provided in~~  
29 ~~subsection (2) of this section,)) The legal effect of such decisions  
30 may vary for the different classes of applications decided by the  
31 examiner but shall include one of the following:~~

32 (a) The decision may be given the effect of a recommendation to the  
33 legislative body;

34 (b) The decision may be given the effect of an administrative  
35 decision appealable within a specified time limit to the legislative  
36 body((-

37 ~~(2) The legislative body may specify the legal effect of a hearing~~  
38 ~~examiner's procedural determination under the state environmental~~

1 ~~policy act, as defined in RCW 43.21C.075(3)(a). It may have the effect~~  
2 ~~under subsection (1) (a) or (b) of this section, or))~~; or

3 (c) The decision may be given the effect of a final decision of the  
4 legislative body, except that applications for rezones may not be given  
5 the effect of a final decision of a legislative body.

6 (3) Each final decision of a hearing examiner shall be in writing  
7 and shall include findings and conclusions, based on the record, to  
8 support the decision. Such findings and conclusions shall also set  
9 forth the manner in which the decision would carry out and conform to  
10 the city's or county's comprehensive plan and the city's or county's  
11 development regulations. Each final decision of a hearing examiner,  
12 unless a longer period is mutually agreed to in writing by the  
13 applicant and the hearing examiner, shall be rendered within ten  
14 working days following conclusion of all testimony and hearings.

15 **Sec. 226.** RCW 35A.63.170 and 1994 c 257 s 7 are each amended to  
16 read as follows:

17 (1) As an alternative to those provisions of this chapter relating  
18 to powers or duties of the planning commission to hear and report on  
19 any proposal to amend a zoning ordinance, the legislative body of a  
20 city may adopt a hearing examiner system under which a hearing examiner  
21 or hearing examiners may hear and decide applications for amending the  
22 zoning ordinance when the amendment which is applied for is not of  
23 general applicability. In addition, the legislative body may vest in  
24 a hearing examiner the power to hear and decide those issues it  
25 believes should be reviewed and decided by a hearing examiner,  
26 including but not limited to:

27 (a) Applications for conditional uses, variances, subdivisions,  
28 shoreline permits, or any other class of applications for or pertaining  
29 to development of land or land use((s which the legislative body  
30 believes should be reviewed and decided by a hearing examiner));

31 (b) Appeals of administrative decisions or determinations; and

32 (c) Appeals of administrative decisions or determinations pursuant  
33 to chapter 43.21C RCW.

34 The legislative body shall prescribe procedures to be followed by  
35 a hearing examiner. If the legislative authority vests in a hearing  
36 examiner the authority to hear and decide variances, then the  
37 provisions of RCW 35A.63.110 shall not apply to the city.

1       (2) Each city legislative body electing to use a hearing examiner  
2 pursuant to this section shall by ordinance specify the legal effect of  
3 the decisions made by the examiner. (~~Except as provided in subsection~~  
4 ~~(2) of this section,~~) The legal effect of such decisions may vary for  
5 the different classes of applications decided by the examiner but shall  
6 include one of the following:

7       (a) The decision may be given the effect of a recommendation to the  
8 legislative body;

9       (b) The decision may be given the effect of an administrative  
10 decision appealable within a specified time limit to the legislative  
11 body(~~(-~~

12       ~~(2) The legislative body shall specify the legal effect of a~~  
13 ~~hearing examiner's procedural determination under the state~~  
14 ~~environmental policy act, as defined in RCW 43.21C.075(3)(a). It may~~  
15 ~~have the effect under subsection (1) (a) or (b) of this section, or))i~~  
16 or

17       (c) The decision may be given the effect of a final decision of the  
18 legislative body, except that applications for a rezone may not be  
19 given the effect of a final decision of a legislative body.

20       (3) Each final decision of a hearing examiner shall be in writing  
21 and shall include findings and conclusions, based on the record, to  
22 support the decision. Such findings and conclusions shall also set  
23 forth the manner in which the decision would carry out and conform to  
24 the city's comprehensive plan and the city's development regulations.  
25 Each final decision of a hearing examiner, unless a longer period is  
26 mutually agreed to in writing by the applicant and the hearing  
27 examiner, shall be rendered within ten working days following  
28 conclusion of all testimony and hearings.

29       **Sec. 227.** RCW 36.70.970 and 1994 c 257 s 9 are each amended to  
30 read as follows:

31       (1) As an alternative to those provisions of this chapter relating  
32 to powers or duties of the planning commission to hear and issue  
33 recommendations on applications for plat approval and applications for  
34 amendments to the zoning ordinance, the county legislative authority  
35 may adopt a hearing examiner system under which a hearing examiner or  
36 hearing examiners may hear and issue decisions on proposals for plat  
37 approval and for amendments to the zoning ordinance when the amendment  
38 which is applied for is not of general applicability. In addition, the

1 legislative authority may vest in a hearing examiner the power to hear  
2 and decide those issues it believes should be reviewed and decided by  
3 a hearing examiner, including but not limited to:

4 (a) Applications for conditional uses (~~((applications))~~), variances  
5 (~~((applications))~~), (~~((applications for))~~) shoreline permits, or any other  
6 class of applications for or pertaining to development of land or land  
7 use((s));

8 (b) Appeals of administrative decisions or determinations; and

9 (c) Appeals of administrative decisions or determinations pursuant  
10 to chapter 43.21C RCW.

11 The legislative authority shall prescribe procedures to be followed  
12 by a hearing examiner.

13 Any county which vests in a hearing examiner the authority to hear  
14 and decide conditional uses and variances shall not be required to have  
15 a zoning adjuster or board of adjustment.

16 (2) Each county legislative authority electing to use a hearing  
17 examiner pursuant to this section shall by ordinance specify the legal  
18 effect of the decisions made by the examiner. (~~(Except as provided in~~  
19 subsection (2) of this section,) Such legal effect may vary for the  
20 different classes of applications decided by the examiner but shall  
21 include one of the following:

22 (a) The decision may be given the effect of a recommendation to the  
23 legislative authority;

24 (b) The decision may be given the effect of an administrative  
25 decision appealable within a specified time limit to the legislative  
26 authority(~~(-~~

27 ~~(2) The legislative authority may specify the legal effect of a~~  
28 ~~hearing examiner's procedural determination under the state~~  
29 ~~environmental policy act, as defined in RCW 43.21C.075(3)(a). It may~~  
30 ~~have the effect under subsection (1) (a) or (b) of this section,~~ or)  
31 or

32 (c) The decision may be given the effect of a final decision of the  
33 legislative authority, except that applications for rezones may not be  
34 given the effect of a final decision of a legislative authority.

35 (3) Each final decision of a hearing examiner shall be in writing  
36 and shall include findings and conclusions, based on the record, to  
37 support the decision. Such findings and conclusions shall also set  
38 forth the manner in which the decision would carry out and conform to  
39 the county's comprehensive plan and the county's development

1 regulations. Each final decision of a hearing examiner, unless a  
2 longer period is mutually agreed to in writing by the applicant and the  
3 hearing examiner, shall be rendered within ten working days following  
4 conclusion of all testimony and hearings.

5 NEW SECTION. **Sec. 228.** The legislature hereby finds and declares:

6 (1) Washington's environmental protection programs have established  
7 strict standards to reduce pollution and protect the public health and  
8 safety and the environment. The single-purpose programs instituted to  
9 achieve these standards have been successful in many respects, and have  
10 produced significant gains in protecting Washington's environment in  
11 the face of substantial population growth.

12 (2) Continued progress to achieve the environmental standards in  
13 the face of continued population growth will require greater  
14 coordination between the single-purpose environmental programs and more  
15 efficient operation of these programs overall. Pollution must be  
16 prevented and controlled and not simply transferred to another media or  
17 another place. This goal can only be achieved by maintaining the  
18 current environmental protection standards and by greater integration  
19 of the existing programs.

20 (3) As the number of environmental laws and regulations have grown  
21 in Washington, so have the number of permits required of business and  
22 government. This regulatory burden has significantly added to the cost  
23 and time needed to obtain essential permits in Washington. The  
24 increasing number of individual permits and permit authorities has  
25 generated the continuing potential for conflict, overlap, and  
26 duplication between the various state, local, and federal permits.

27 (4) To ensure that local needs and environmental conditions receive  
28 the proper attention, the issuance and renewal of permits should  
29 continue to be made, to the extent feasible, at the regional and local  
30 levels of the environmental programs.

31 (5) The purpose of this chapter is to require the department of  
32 ecology to institute new, efficient procedures that will assist  
33 businesses and public agencies in complying with the environmental  
34 quality laws in an expedited fashion, without reducing protection of  
35 public health and safety and the environment.

36 (6) Those procedures need to provide a permit process that promotes  
37 effective dialogue and ensures ease in the transfer and clarification  
38 of technical information, while preventing duplication. It is



1 necessary that the procedures establish a process for preliminary and  
2 ongoing meetings between the applicant, the consolidated permit agency,  
3 and the participating permit agencies, but do not preclude the  
4 applicant or participating permit agencies from individually  
5 coordinating with each other.

6 (7) It is necessary, to the maximum extent practicable, that the  
7 procedures established in this chapter ensure that the consolidated  
8 permit agency process and applicable permit requirements and criteria  
9 are integrated and run concurrently, rather than consecutively.

10 (8) It is necessary to provide a reliable and consolidated source  
11 of information concerning the environmental and land use laws and  
12 procedures that apply to any given proposal. This information is to be  
13 current and encompass all state and local jurisdictions. To the extent  
14 possible, it is to encompass federal jurisdictions and functions, as  
15 well.

16 (9) The process shall provide an optional process by which a  
17 project proponent may obtain active coordination of all applicable  
18 regulatory and land-use permitting procedures. This process is not to  
19 replace individual laws, or diminish the substantive decision-making  
20 role of individual jurisdictions. Rather it is to provide  
21 predictability, administrative consolidation, and, where possible,  
22 consolidation of appeal processes.

23 (10) The process shall provide consolidated, effective, and easier  
24 opportunities for members of the public to receive information and  
25 present their views about proposed projects.

26 NEW SECTION. **Sec. 229.** Unless the context clearly requires  
27 otherwise, the definitions in this section apply throughout this  
28 chapter.

29 (1) "Center" means the permit assistance center established in the  
30 department by section 230 of this act.

31 (2) "Consolidated permit agency" means the permit agency that has  
32 the greatest overall jurisdiction over a project.

33 (3) "Department" means the department of ecology.

34 (4) "Participating permit agency" means a permit agency, other than  
35 the consolidated permit agency, that is responsible for the issuance of  
36 a permit for a project.

1 (5) "Permit" means any license, certificate, registration, permit,  
2 or other form of authorization required by a permit agency to engage in  
3 a particular activity.

4 (6) "Permit agency" means:

5 (a) The department of ecology, an air pollution control authority,  
6 the department of natural resources, the department of fish and  
7 wildlife, and the department of health; and

8 (b) Any other state or federal agency, county, city, or town for  
9 the project that participates at the request of the permit applicant  
10 and upon the agency's agreement to be subject to this chapter.

11 (7) "Project" means an activity, the conduct of which requires a  
12 permit from two or more permit agencies.

13 NEW SECTION. **Sec. 230.** The permit assistance center is  
14 established within the department. The center shall:

15 (1) Publish and keep current one or more handbooks containing lists  
16 and explanations of all permit laws. The center shall coordinate with  
17 the business assistance center in providing and maintaining this  
18 information to applicants and others. To the extent possible, the  
19 handbook shall include relevant federal laws. A state agency or local  
20 government shall provide a reasonable number of copies of application  
21 forms, statutes, ordinances, rules, handbooks, and other informational  
22 material requested by the center and shall otherwise fully cooperate  
23 with the center. The center shall seek the cooperation of relevant  
24 federal agencies;

25 (2) Establish, and make known, a point of contact for distribution  
26 of the handbook and advice to the public as to its interpretation in  
27 any given case;

28 (3) Work closely and cooperatively with the business license center  
29 and the business assistance center in providing efficient and  
30 nonduplicative service to the public; and

31 (4) Provide a permit coordination training program designed to:

32 (a) Educate project facilitators as to the role and requirements of  
33 all jurisdictions;

34 (b) Share permit coordination experiences;

35 (c) Improve the quality and efficiency of project facilitation; and

36 (d) Certify project facilitators.

1        NEW SECTION.    **Sec. 231.**    (1) Not later than January 1, 1996, the  
2 center shall establish by rule an administrative process for the  
3 designation of a consolidated permit agency for a project.

4        (2) The administrative process shall consist of the establishment  
5 of guidelines for designating the consolidated permit agency for a  
6 project. If a permit agency is the lead agency for purposes of chapter  
7 43.21C RCW, that permit agency shall be the consolidated permit agency.  
8 In other cases, the guidelines shall require that at least the  
9 following factors be considered in determining which permit agency has  
10 the greatest overall jurisdiction over the project:

11        (a) The types of facilities or activities that make up the project;

12        (b) The types of public health and safety and environmental  
13 concerns that should be considered in issuing permits for the project;

14        (c) The environmental medium that may be affected by the project,  
15 the extent of those potential effects, and the environmental protection  
16 measures that may be taken to prevent the occurrence of, or to  
17 mitigate, those potential effects;

18        (d) The regulatory activity that is of greatest importance in  
19 preventing or mitigating the effects that the project may have on  
20 public health and safety or the environment; and

21        (e) The statutory and regulatory requirements that apply to the  
22 project and the complexity of those requirements.

23        NEW SECTION.    **Sec. 232.**    Upon the request of a project applicant,  
24 the center shall appoint a project facilitator to assist the applicant  
25 in determining which regulatory requirements, processes, and permits  
26 may be required for development and operation of the proposed project.  
27 The project facilitator shall provide the information to the applicant  
28 and explain the options available to the applicant in obtaining the  
29 required permits. If the applicant requests, the center shall  
30 designate a coordinating permit agency as provided in section 233 of  
31 this act.

32        NEW SECTION.    **Sec. 233.**    (1) A permit applicant who requests the  
33 designation of a consolidated permit agency shall provide the center  
34 with a description of the project, a preliminary list of the permits  
35 that the project may require, the identity of any public agency that  
36 has been designated the lead agency for the project pursuant to chapter  
37 43.21C RCW, and the identity of the participating permit agencies. The

1 center may request any information from the permit applicant that is  
2 necessary to make the designation under this section, and may convene  
3 a scoping meeting of the likely consolidated permit agency and  
4 participating permit agencies in order to make that designation.

5 (2) The consolidated permit agency shall serve as the main point of  
6 contact for the permit applicant with regard to the processing of the  
7 consolidated permit process for the project and shall manage the  
8 procedural aspects of that processing consistent with existing laws  
9 governing the consolidated permit agency and participating permit  
10 agencies, and with the procedures agreed to by those agencies in  
11 accordance with section 234 of this act. In carrying out these  
12 responsibilities, the consolidated permit agency shall ensure that the  
13 permit applicant has all the information needed to apply for all the  
14 component permits that are incorporated in the consolidated permit  
15 process for the project, coordinate the review of those permits by the  
16 respective participating permit agencies, ensure that timely permit  
17 decisions are made by the participating permit agencies, and assist in  
18 resolving any conflict or inconsistency among the permit requirements  
19 and conditions that are to be imposed by the participating permit  
20 agencies with regard to the project. The coordinating permit agency  
21 shall keep in contact with the applicant as well as other permit  
22 agencies in order to assure that the process is progressing as  
23 scheduled. The coordinating permit agency shall recommend appropriate  
24 alternatives that may be more efficient and identify potential problems  
25 to successful completion of the process.

26 (3) This chapter shall not be construed to limit or abridge the  
27 powers and duties granted to a participating permit agency under the  
28 law that authorizes or requires the agency to issue a permit for a  
29 project. Each participating permit agency shall retain its authority  
30 to make all decisions on all nonprocedural matters with regard to the  
31 respective component permit that is within its scope of its  
32 responsibility, including, but not limited to, the determination of  
33 permit application completeness, permit approval or approval with  
34 conditions, or permit denial. The consolidated permit agency may not  
35 substitute its judgment for that of a participating permit agency on  
36 any such nonprocedural matters.

37 NEW SECTION. **Sec. 234.** (1) Within twenty-one days of the date  
38 that the consolidated permit agency is designated, it shall convene a

1 meeting with the permit applicant for the project and the participating  
2 permit agencies. The meeting agenda shall include at least all of the  
3 following matters:

4 (a) A determination of the permits that are required for the  
5 project;

6 (b) A review of the permit application forms and other application  
7 requirements of the agencies that are participating in the consolidated  
8 permit process;

9 (c)(i) A determination of the timelines that will be used by the  
10 consolidated permit agency and each participating permit agency to make  
11 permit decisions, including the time periods required to determine if  
12 the permit applications are complete, to review the application or  
13 applications, and to process the component permits, and the timelines  
14 that will be used by the consolidated permit agency to aggregate the  
15 component permits into, and to issue the consolidated permit process.  
16 In the development of this time line, full attention shall be given to  
17 achieving the maximum efficiencies possible through concurrent studies,  
18 consolidated applications, hearings, and comment periods. Except as  
19 provided in (c)(ii) of this subsection, the timelines established under  
20 this subsection, with the assent of the consolidated permit agency and  
21 each participating permit agency, shall commit the consolidated permit  
22 agency and each participating permit agency to act on the component  
23 permit within time periods that are different than those required by  
24 other applicable provisions of law.

25 (ii) An accelerated time period for the consideration of a permit  
26 application may not be set if that accelerated time period would be  
27 inconsistent with, or in conflict with, any time period or series of  
28 time periods set by statute for that consideration, or with any  
29 statute, rule, or regulation, or adopted state policy, standard, or  
30 guideline that requires any of the following:

31 (A) Other agencies, interested persons, federally recognized Indian  
32 tribes, or the public to be given adequate notice of the application;

33 (B) Other agencies to be given a role in, or be allowed to  
34 participate in, the decision to approve or disapprove the application;  
35 or

36 (C) Interested persons or the public to be provided the opportunity  
37 to challenge, comment on, or otherwise voice their concerns regarding  
38 the application;

1 (d) The scheduling of any public hearings that are required to  
2 issue permits for the project and a determination of the feasibility of  
3 coordinating or consolidating any of those required public hearings;  
4 and

5 (e) A discussion of fee arrangements for the consolidated permit  
6 process, including an estimate of the costs allowed under section 237  
7 of this act and the billing schedule.

8 (2) Each agency shall send at least one representative qualified to  
9 make decisions concerning the applicability and timelines associated  
10 with all permits administered by that jurisdiction. At the request of  
11 the applicant, the consolidated permit agency shall notify any relevant  
12 federal agency of the date of the meeting and invite that agency's  
13 participation in the process.

14 (3) If a permit agency or the applicant foresees, at any time, that  
15 it will be unable to meet its obligations under the agreement, it shall  
16 notify the consolidated permit agency of the problem. The coordinating  
17 permit agency shall notify the permit agencies and the applicant and,  
18 upon agreement of all parties, adjust the schedule, or, if necessary,  
19 schedule another work plan meeting.

20 (4) The consolidated permit agency may request any information from  
21 the applicant that is necessary to comply with its obligations under  
22 this section, consistent with the timelines set pursuant to this  
23 section.

24 (5) A summary of the decisions made under this section shall be  
25 made available for public review upon the filing of the consolidated  
26 permit process application or permit applications.

27 NEW SECTION. Sec. 235. (1) The permit applicant may withdraw from  
28 the consolidated permit process by submitting to the consolidated  
29 permit agency a written request that the process be terminated. Upon  
30 receipt of the request, the consolidated permit agency shall notify the  
31 center and each participating permit agency that a consolidated permit  
32 process is no longer applicable to the project.

33 (2) The permit applicant may submit a written request to the  
34 consolidated permit agency that the permit applicant wishes a  
35 participating permit agency to withdraw from participation on the basis  
36 of a reasonable belief that the issuance of the consolidated permit  
37 process would be accelerated if the participating permit agency  
38 withdraws. In that event, the participating permit agency shall

1 withdraw from participation if the consolidated permit agency approves  
2 the request.

3 NEW SECTION. **Sec. 236.** The consolidated permit agency shall  
4 ensure that the participating permit agencies make all the permit  
5 decisions that are necessary for the incorporation of the permits into  
6 the consolidated permit process and act on the component permits within  
7 the time periods established pursuant to section 234 of this act.

8 NEW SECTION. **Sec. 237.** (1) The consolidated permit agency may  
9 enter into a written agreement with the applicant to recover from the  
10 applicant the reasonable costs incurred by the consolidated permit  
11 agency in carrying out the requirements of this chapter.

12 (2) The consolidated permit agency may recover only the costs of  
13 performing those consolidated permit services and shall be negotiated  
14 with the permit applicant in the meeting required pursuant to section  
15 234 of this act. The billing process shall provide for accurate time  
16 and cost accounting and may include a billing cycle that provides for  
17 progress payments.

18 NEW SECTION. **Sec. 238.** A petition by the permit applicant for  
19 review of an agency action in issuing, denying, or amending a permit,  
20 or any portion of a consolidated permit agency permit, shall be  
21 submitted by the permit applicant to the consolidated permit agency or  
22 the participating permit agency having jurisdiction over that permit  
23 and shall be processed in accordance with the procedures of that permit  
24 agency. Within thirty days of receiving the petition, the consolidated  
25 permit agency shall notify the other environmental agencies  
26 participating in the original consolidated permit process.

27 NEW SECTION. **Sec. 239.** If an applicant petitions for a  
28 significant amendment or modification to a consolidated permit process  
29 application or any of its component permit applications, the  
30 consolidated permit agency shall reconvene a meeting of the  
31 participating permit agencies, conducted in accordance with section 234  
32 of this act.

33 NEW SECTION. **Sec. 240.** If an applicant fails to provide  
34 information required for the processing of the component permit

1 applications for a consolidated permit process or for the designation  
2 of a consolidated permit agency, the time requirements of this chapter  
3 shall be tolled until such time as the information is provided.

4 NEW SECTION. **Sec. 241.** (1) The center, by rule, shall establish  
5 an expedited appeals process by which a petitioner or applicant may  
6 appeal any failure by a permit agency to take timely action on the  
7 issuance or denial of a permit in accordance with the time limits  
8 established under this chapter.

9 (2) If the center finds that the time limits under appeal have been  
10 violated without good cause, it shall establish a date certain by which  
11 the permit agency shall act on the permit application with adequate  
12 provision for the requirements of section 234(1)(c)(ii) (A) through (C)  
13 of this act, and provide for the full reimbursement of any filing or  
14 permit processing fees paid by the applicant to the permit agency for  
15 the permit application under appeal.

16 NEW SECTION. **Sec. 242.** By December 1, 1997, the center shall  
17 submit a report to the appropriate committees of both houses of the  
18 legislature detailing the following information:

19 (1) The number of instances in which a consolidated permit agency  
20 has been requested and used, and the disposition of those cases;

21 (2) The amount of time elapsed between an initial request by a  
22 permit applicant for a consolidated permit process and the ultimate  
23 approval or disapproval of the permits included in the process;

24 (3) The number of instances in which the expedited appeals process  
25 was requested, and the disposition of those cases; and

26 (4) Potential conflicts and perceived inconsistencies among  
27 existing statutes.

28 NEW SECTION. **Sec. 243.** The sum of seventy thousand dollars, or as  
29 much thereof as may be necessary, is appropriated for the biennium  
30 ending June 30, 1997, from the general fund; the sum of ninety thousand  
31 dollars, or as much thereof as may be necessary, is appropriated for  
32 the biennium ending June 30, 1997, from the state toxics account; the  
33 sum of one hundred sixty thousand dollars, or as much thereof as may be  
34 necessary, is appropriated for the biennium ending June 30, 1997, from  
35 the water quality permit fee account; and the sum of fifty-five  
36 thousand dollars, or as much thereof as may be necessary, is



1 appropriated for the biennium ending June 30, 1997, from the air  
2 operating permit fee account to the department of ecology for the  
3 purposes of sections 228 through 242 of this act.

4 NEW SECTION. **Sec. 244.** A new section is added to chapter 43.131  
5 RCW to read as follows:

6 The permit assistance center and its powers and duties shall be  
7 terminated June 30, 1999, as provided in section 245 of this act.

8 NEW SECTION. **Sec. 245.** A new section is added to chapter 43.131  
9 RCW to read as follows:

10 The following acts or parts of acts, as now existing or hereafter  
11 amended, are each repealed, effective June 30, 2000:

- 12 (1) RCW 90.---.--- and 1995 c -- s 228 (section 228 of this act);
- 13 (2) RCW 90.---.--- and 1995 c -- s 229 (section 229 of this act);
- 14 (3) RCW 90.---.--- and 1995 c -- s 230 (section 230 of this act);
- 15 (4) RCW 90.---.--- and 1995 c -- s 231 (section 231 of this act);
- 16 (5) RCW 90.---.--- and 1995 c -- s 232 (section 232 of this act);
- 17 (6) RCW 90.---.--- and 1995 c -- s 233 (section 233 of this act);
- 18 (7) RCW 90.---.--- and 1995 c -- s 234 (section 234 of this act);
- 19 (8) RCW 90.---.--- and 1995 c -- s 235 (section 235 of this act);
- 20 (9) RCW 90.---.--- and 1995 c -- s 236 (section 236 of this act);
- 21 (10) RCW 90.---.--- and 1995 c -- s 237 (section 237 of this act);
- 22 (11) RCW 90.---.--- and 1995 c -- s 238 (section 238 of this act);
- 23 (12) RCW 90.---.--- and 1995 c -- s 239 (section 239 of this act);
- 24 (13) RCW 90.---.--- and 1995 c -- s 240 (section 240 of this act);
- 25 and
- 26 (14) RCW 90.---.--- and 1995 c -- s 241 (section 241 of this act).

27 NEW SECTION. **Sec. 246.** The following acts or parts of acts are  
28 each repealed:

- 29 (1) RCW 90.62.010 and 1982 c 179 s 1, 1977 c 54 s 1, & 1973 1st  
30 ex.s. c 185 s 1;
- 31 (2) RCW 90.62.020 and 1994 c 264 s 96, 1988 c 36 s 71, 1977 c 54 s  
32 2, & 1973 1st ex.s. c 185 s 2;
- 33 (3) RCW 90.62.030 and 1973 1st ex.s. c 185 s 3;
- 34 (4) RCW 90.62.040 and 1990 c 137 s 1, 1977 c 54 s 3, & 1973 1st  
35 ex.s. c 185 s 4;
- 36 (5) RCW 90.62.050 and 1977 c 54 s 4 & 1973 1st ex.s. c 185 s 5;

- 1 (6) RCW 90.62.060 and 1982 c 179 s 2, 1977 c 54 s 5, & 1973 1st  
2 ex.s. c 185 s 6;
- 3 (7) RCW 90.62.070 and 1973 1st ex.s. c 185 s 7;
- 4 (8) RCW 90.62.080 and 1987 c 109 s 156, 1977 c 54 s 6, & 1973 1st  
5 ex.s. c 185 s 8;
- 6 (9) RCW 90.62.090 and 1977 c 54 s 7 & 1973 1st ex.s. c 185 s 9;
- 7 (10) RCW 90.62.100 and 1977 c 54 s 8 & 1973 1st ex.s. c 185 s 10;
- 8 (11) RCW 90.62.110 and 1973 1st ex.s. c 185 s 11;
- 9 (12) RCW 90.62.120 and 1973 1st ex.s. c 185 s 12;
- 10 (13) RCW 90.62.130 and 1977 c 54 s 9;
- 11 (14) RCW 90.62.900 and 1973 1st ex.s. c 185 s 13;
- 12 (15) RCW 90.62.901 and 1973 1st ex.s. c 185 s 14;
- 13 (16) RCW 90.62.904 and 1973 1st ex.s. c 185 s 15;
- 14 (17) RCW 90.62.905 and 1973 1st ex.s. c 185 s 16;
- 15 (18) RCW 90.62.906 and 1973 1st ex.s. c 185 s 18;
- 16 (19) RCW 90.62.907 and 1973 1st ex.s. c 185 s 19; and
- 17 (20) RCW 90.62.908 and 1977 c 54 s 10.

18 NEW SECTION. **Sec. 247.** Sections 101, 201 through 204, and 207  
19 through 213 of this act shall constitute a new chapter in Title 36 RCW.

20 NEW SECTION. **Sec. 248.** Sections 228 through 241 of this act shall  
21 constitute a new chapter in Title 90 RCW.

22 NEW SECTION. **Sec. 249.** RCW 36.70A.065 and 36.70A.440 are  
23 recodified as sections within the new chapter created in section 247 of  
24 this act.

25 NEW SECTION. **Sec. 250.** The department of community, trade, and  
26 economic development shall provide training and technical assistance to  
27 counties and cities to assist them in fulfilling the requirements of  
28 chapter 36.-- RCW (sections 101, 201 through 204, and 207 through 213  
29 of this act). The land use study commission created by section 401 of  
30 this act shall monitor local government consolidated permit procedures  
31 and the effectiveness of the timelines established by section 207 of  
32 this act. The commission shall include in its report submitted to the  
33 governor and the legislature on November 30, 1997, its recommendation  
34 about what timelines, if any, should be imposed on the local government

1 consolidated permit process required by chapter 36.-- RCW (sections  
2 101, 201 through 204, and 207 through 213 of this act).

3 **PART III - APPEALS**

4 NEW SECTION. **Sec. 301.** This chapter may be known and cited as the  
5 land use petition act. A petition brought under this chapter must be  
6 called a land use petition.

7 NEW SECTION. **Sec. 302.** The purpose of this chapter is to reform  
8 the process for judicial review of land use decisions made by local  
9 jurisdictions, by establishing uniform, expedited appeal procedures and  
10 uniform criteria for reviewing such decisions, in order to provide  
11 consistent, predictable, and timely judicial review.

12 NEW SECTION. **Sec. 303.** Unless the context clearly requires  
13 otherwise, the definitions in this section apply throughout this  
14 chapter.

15 (1) "Land use decision" means a final determination by a local  
16 jurisdiction's body or officer with the highest level of authority to  
17 make the determination, including those with authority to hear appeals,  
18 on:

19 (a) An application for a development permit or other governmental  
20 approval required by law before real property may be improved,  
21 developed, modified, sold, transferred, or used, but excluding  
22 applications for permits or approvals to use streets, parks, and  
23 similar types of public property and excluding applications for  
24 legislative approvals such as rezones;

25 (b) An interpretative or declaratory decision regarding the  
26 application to a specific property of zoning or other ordinances or  
27 rules regulating the development, modification, maintenance, or use of  
28 real property; and

29 (c) The enforcement of ordinances regulating the development,  
30 modification, maintenance, or use of real property. However, when a  
31 local jurisdiction is required by law to enforce the ordinances in a  
32 court of limited jurisdiction, a petition may not be brought under this  
33 chapter.

34 (2) "Local jurisdiction" means a county, city, or town, or special  
35 purpose district as defined in RCW 36.96.010.

1 (3) "Person" means an individual, partnership, corporation,  
2 association, public or private organization, or governmental agency.

3 NEW SECTION. **Sec. 304.** (1) This chapter replaces the writ of  
4 certiorari for judicial review of local jurisdictions' land use  
5 decisions.

6 (2) This chapter does not apply to judicial review procedures  
7 established by other laws, including, but not limited to judicial  
8 review of:

9 (a) Land use decisions made by bodies that are not part of a local  
10 jurisdiction;

11 (b) Land use decisions of a local jurisdiction that are subject to  
12 review by a quasi-judicial body created by state law, such as the  
13 shorelines hearings board or the growth management hearings board;

14 (c) Claims provided by any law for monetary damages or  
15 compensation; or

16 (d) Applications for injunctive relief, including a writ of  
17 prohibition or mandamus.

18 (3) If one or more claims for damages or compensation are set forth  
19 in the same complaint with a land use petition brought under this  
20 chapter, the procedures and standards, including deadlines, provided in  
21 this chapter for review of the petition do not apply to the claims for  
22 damages or compensation. The judge who hears the land use petition  
23 may, if appropriate, preside at a trial for damages or compensation.

24 (4) The court rules govern procedural matters under this chapter to  
25 the extent that the rules are consistent with this chapter.

26 NEW SECTION. **Sec. 305.** (1) A party's agreement is a waiver of the  
27 right to petition under this chapter for judicial review of the matters  
28 agreed to, when:

29 (a) The agreement is made as provided in RCW 82.02.020 (as  
30 recodified by this act); or

31 (b) For matters outside the scope of RCW 82.02.020 (as recodified  
32 by this act), the agreement is made as part of a written contract with  
33 the local jurisdiction.

34 (2) In all other instances, waiver is determined in accordance with  
35 common law principles.

1        NEW SECTION.    **Sec. 306.**    (1) Proceedings for review under this  
2 chapter must be commenced by filing a land use petition in superior  
3 court.

4        (2) A land use petition is barred, and the court may not grant  
5 review, unless the petition is timely filed with the court.    The  
6 petition must be served on the following parties:

7        (a) The local jurisdiction, which for purposes of the petition  
8 shall be the jurisdiction's corporate entity and not an individual  
9 decision maker or department; and

10        (b) Each of the following, if not the petitioner:

11        (i) Any person identified by name and address in the local  
12 jurisdiction's written decision as an applicant for the permit or  
13 approval at issue or as a property owner of the property at issue;

14        (ii) If no person is named in the decision as provided in (b)(i) of  
15 this subsection, any such person identified in the application for a  
16 permit or approval at issue; and

17        (iii) Any person who filed an appeal to a quasi-judicial decision  
18 maker regarding the land use decision at issue, unless the person has  
19 abandoned the appeal or the person's claims were dismissed before the  
20 quasi-judicial decision was rendered.    Any person who later intervened  
21 or joined in the appeal is not required to be made a party under this  
22 subsection.

23        (3) The petition is timely if it is filed within twenty-one days of  
24 the issuance of the land use decision.

25        (4) For the purposes of this section, a land use decision is issued  
26 on the date on which a written decision is mailed or if not mailed, the  
27 date on which the local jurisdiction provides notice that a written  
28 decision is publicly available.    However, if written notification is  
29 not required to be provided, the decision is issued on the later of:

30        (a) The date that the decision is made at a public meeting; or

31        (b) The date that the decision is entered into the public record.

32        (5) Service on the local jurisdiction must be by delivery of a copy  
33 of the petition pursuant to RCW 4.28.080.    Service on other parties  
34 must be in accordance with the civil rules or, for parties who provided  
35 an address to the local jurisdiction during a quasi-judicial proceeding  
36 regarding the land use decision at issue, service may be by deposit in  
37 the United States mail to the address.    Service by mail is effective on  
38 the date of mailing.    Proof of service must be evidence by affidavit.

1        NEW SECTION.    **Sec. 307.**    Standing to bring a land use petition  
2 under this chapter, and to intervene in a proceeding under this  
3 chapter, is limited to the following parties:

4        (1) The applicant and the owner of property to which the land use  
5 decision is directed;

6        (2) Another person aggrieved or adversely affected by the land use  
7 decision, or who would be aggrieved or adversely affected by a reversal  
8 or modification of the land use decision, and who will suffer direct  
9 and substantial impacts from the decision, reversal, or modification.

10       NEW SECTION.    **Sec. 308.**    (1) A petitioner shall set forth in a land  
11 use petition:

12        (a) The name and mailing address of the petitioner;

13        (b) The name and mailing address of the petitioner's attorney, if  
14 any;

15        (c) The name and mailing address of the local jurisdiction whose  
16 land use decision is at issue;

17        (d) Identification of the decision-making body or officer, together  
18 with a duplicate copy of the decision, or if not a written decision, a  
19 summary or brief description of it;

20        (e) Identification of persons who were named petitioners or  
21 appellants in any quasi-judicial proceedings regarding the land use  
22 decision at issue;

23        (f) Facts demonstrating that the petitioner is entitled to seek  
24 judicial review; and

25        (g) A request for relief, specifying the type of relief requested.

26        (2) Within sixty days of service of a land use petition on the  
27 local jurisdiction, the local jurisdiction must certify and submit to  
28 the court and serve on all parties to the petition a complete record of  
29 the proceedings leading to the decision identified in the land use  
30 petition pursuant to subsection (1)(d) of this section.

31        (3) The local jurisdiction need not certify the record, if the  
32 court determines that the petition should be dismissed for any reason,  
33 including improper service, lack of standing, failure to join an  
34 indispensable party, or failure to comply with subsection (1) of this  
35 section.

36        (4) The court may grant additional time for the certification of  
37 the record, if additional time is determined by the court to be  
38 necessary.

1 (5) Within fifteen days of service of the petition, the local  
2 jurisdiction shall notify the petitioner of the estimated cost of  
3 preparing the record.

4 (6) The petitioner shall pay the cost of preparing the record  
5 within fifteen days of service of the record on the petitioner.

6 NEW SECTION. **Sec. 309.** The court shall provide expedited review  
7 of petitions filed under this chapter. If judicial review is granted,  
8 the matter must be set for hearing within sixty days of the date set  
9 for submitting the local jurisdiction's record, absent a showing of  
10 compelling reasons for a different date or a stipulation of the  
11 parties.

12 NEW SECTION. **Sec. 310.** (1) A petitioner for judicial review of a  
13 land use decision may request the court to stay or suspend an action by  
14 the local jurisdiction or another party to implement the decision under  
15 review, by including the request in the petition. The request must set  
16 forth a statement of grounds for the stay and the factual basis for the  
17 request. The court shall rule on the request at the hearing on the  
18 order to show cause.

19 (2) Another party to the judicial review proceedings may request a  
20 stay by making a motion in accordance with the court rules. The motion  
21 must be filed with the party's first pleading in the matter.

22 (3) The court shall deny a request for a stay that is made after  
23 the times required by subsections (1) and (2) of this section unless  
24 the party requesting the stay establishes that the reasons justifying  
25 the stay did not exist, or could not have been discovered, at the times  
26 set forth in subsections (1) and (2) of this section.

27 (4) A court may grant a stay only if the court finds that:

28 (a) The party requesting the stay is likely to prevail on the  
29 merits;

30 (b) Without the stay the party requesting it will suffer  
31 irreparable harm; and

32 (c) The grant of a stay will not substantially harm other parties  
33 to the proceedings or the public.

34 (5) The court may grant the request for a stay upon such terms and  
35 conditions, such as the filing of security, as are necessary to prevent  
36 harm to other parties from the stay.

1        NEW SECTION.    **Sec. 311.**    (1) Within forty-five days after entry of  
2 an order to submit the record, or within such a further time as the  
3 court allows or as the parties agree, the local jurisdiction shall  
4 submit to the court a certified copy of the record for judicial review  
5 of the land use decision, except that the petitioner shall prepare and  
6 submit a verbatim transcript of any hearings held on the matter.

7        (2) The petitioner shall pay the local jurisdiction the estimated  
8 costs of preparing the record as determined by the court at the show  
9 cause hearing. A failure by the petitioner to timely pay the local  
10 jurisdiction as ordered relieves the local jurisdiction of the  
11 responsibility to prepare and submit the record and is grounds for  
12 dismissal of the petition.

13        (3) The court in its final judgment may assess the actual costs of  
14 preparing the record against the petitioner if the relief sought by the  
15 petitioner is substantially denied, and may assess the costs against  
16 and among the local jurisdiction and other parties of record if the  
17 relief sought by the petitioner is substantially granted.

18        (4) The court may require or permit corrections of errors or  
19 omissions in the record.

20        NEW SECTION.    **Sec. 312.**    (1) If the land use decision being  
21 reviewed was made by a quasi-judicial body or officer who was making  
22 factual determinations and the parties had the opportunity to make a  
23 record on the factual issues, judicial review of factual issues, and  
24 the conclusions drawn from the factual issues, must be confined to the  
25 record created by the quasi-judicial body or officer, except as  
26 provided in this section.

27        (2) For decisions described in subsection (1) of this section, the  
28 record may be supplemented by additional evidence only if the  
29 additional evidence relates to:

30        (a) Disputed factual issues regarding the authority or jurisdiction  
31 of the body or officer that made the land use decision;

32        (b) Grounds for disqualification of a member of the body or of the  
33 officer that made the land use decision;

34        (c) Unlawfulness of the procedure used to make the decision;

35        (d) Matters that were improperly excluded from the record after  
36 being offered by a party to the quasi-judicial proceeding; or

37        (e) Matters that were outside the jurisdiction of the body or  
38 officer that made the land use decision.



1 (3) For land use decisions other than those described in subsection  
2 (1) of this section, the record for judicial review may be supplemented  
3 by evidence of material facts that were not required to be made part of  
4 the local jurisdiction's record.

5 (4) The parties may not conduct civil discovery prior to the  
6 determination of the land use petition except as provided in subsection  
7 (2) of this section. Requests made under chapter 42.17 RCW for records  
8 relating to the matters at issue in the pending land use petition must  
9 be treated as requests for civil discovery and must meet the  
10 requirements of this section and the court rules.

11 NEW SECTION. **Sec. 313.** (1) The superior court, acting without a  
12 jury, shall review the record and such supplemental evidence as is  
13 permitted under RCW 36.70B.100. The court may grant relief only if the  
14 party seeking relief has carried the burden of establishing that one of  
15 the standards set forth in (a), (b), and (c) of this subsection have  
16 been met. The standards are:

17 (a) The party seeking relief has been substantially prejudiced as  
18 a result of the claimed error or errors, and:

19 (i) The body or officer that made the land use decision engaged in  
20 unlawful procedure or failed to follow a prescribed process;

21 (ii) The land use decision under review is a clearly erroneous  
22 interpretation or application of the law, in light of the law's  
23 purpose; or

24 (iii) The land use decision under review is not supported by  
25 substantial evidence;

26 (b) The land use decision under review was outside the authority or  
27 jurisdiction of the body or officer making the decision; and

28 (c) The land use decision violates the constitutional rights of the  
29 party seeking relief.

30 (2) In order to grant relief under this chapter, it is not  
31 necessary for the court to find that the local jurisdiction engaged in  
32 arbitrary and capricious conduct. A grant of relief is not equivalent  
33 to a finding of liability for monetary damages or compensation.

34 NEW SECTION. **Sec. 314.** The court may affirm or reverse the land  
35 use decision under review, modify it, or remand it for modification or  
36 further proceedings. If the decision is remanded for modification or  
37 further proceedings, the court may make the order as it finds necessary

1 to preserve the interests of the parties and the public, pending  
2 further proceedings or action by the local jurisdiction.

3 **Sec. 315.** RCW 7.16.360 and 1989 c 175 s 38 are each amended to  
4 read as follows:

5 This chapter does not apply to state agency action reviewable under  
6 chapter 34.05 RCW or the land use decisions of local jurisdictions  
7 reviewable under chapter 36.-- RCW (sections 301 through 314 of this  
8 act).

9 **Sec. 316.** RCW 58.17.180 and 1983 c 121 s 5 are each amended to  
10 read as follows:

11 Any decision approving or disapproving any plat shall be reviewable  
12 for ~~((unlawful, arbitrary, capricious or corrupt action or nonaction by~~  
13 ~~writ of review before))~~ under chapter 36.-- RCW (sections 301 through  
14 314 of this act) by the superior court of the county in which such  
15 matter is pending. ~~((Standing to bring the action is limited to the~~  
16 ~~following parties:~~

17 ~~(1) The applicant or owner of the property on which the subdivision~~  
18 ~~is proposed;~~

19 ~~(2) Any property owner entitled to special notice under RCW~~  
20 ~~58.17.090;~~

21 ~~(3) Any property owner who deems himself aggrieved thereby and who~~  
22 ~~will suffer direct and substantial impacts from the proposed~~  
23 ~~subdivision.~~

24 ~~Application for a writ of review shall be made to the court within~~  
25 ~~thirty days from any decision so to be reviewed. The cost of~~  
26 ~~transcription of all records ordered certified by the court for such~~  
27 ~~review shall be borne by the appellant.))~~

28 NEW SECTION. **Sec. 317.** A new section is added to chapter 4.84 RCW  
29 to read as follows:

30 (1) Notwithstanding any other provisions of this chapter,  
31 reasonable attorneys fees and costs shall be awarded to the prevailing  
32 party or substantially prevailing party on appeal before the superior  
33 court, court of appeals, or the supreme court of a decision by a  
34 county, city, or town to issue, condition, or deny a development permit  
35 involving a site-specific rezone, zoning, plat, conditional use,  
36 variance, shoreline permit, building permit, site plan, or similar land

1 use approval or decision. The court shall award and determine the  
2 amount of reasonable attorneys fees and costs under this section if:

3 (a) The prevailing party on appeal was the prevailing or  
4 substantially prevailing party before the county, city, or town, or in  
5 a decision involving a substantial development permit under chapter  
6 90.58 RCW, the prevailing party on appeal was the prevailing party or  
7 the substantially prevailing party before the shoreline hearings board;  
8 and

9 (b) The prevailing party on appeal was the prevailing party or  
10 substantially prevailing party in all prior judicial proceedings.

11 (2) In addition to the prevailing party under subsection (1) of  
12 this section, the county, city, or town whose decision is on appeal is  
13 considered a prevailing party if its decision is upheld at superior  
14 court and on appeal.

15 NEW SECTION. **Sec. 318.** Sections 301 through 314 of this act  
16 constitute a new chapter in Title 36 RCW.

17 **PART IV - STUDY**

18 NEW SECTION. **Sec. 401.** The land use study commission is hereby  
19 established. The commission s goal shall be the integration and  
20 consolidation of the state s land use and environmental laws into a  
21 single, manageable statute. In fulfilling its responsibilities, the  
22 commission shall evaluate the effectiveness of the growth management  
23 act, the state environmental policy act, the shoreline management act,  
24 and other state land use, planning, environmental, and permitting  
25 statutes.

26 NEW SECTION. **Sec. 402.** The commission shall consist of not more  
27 than thirteen members. Seven members of the commission shall be  
28 appointed by the governor, two members shall be appointed by the  
29 speaker of the house of representatives, and two members shall be  
30 appointed by the president of the senate. Membership shall reflect the  
31 interests of business, agriculture, labor, the environment, other  
32 citizens, the legislature, cities, counties, federally recognized  
33 Indian tribes, and state agencies. The director of the department of  
34 community, trade, and economic development, or the director s designee,  
35 shall serve in a nonvoting capacity as chair of the commission. The

1 director of the department of ecology, or the director's designee,  
2 shall also be a member of the commission in a nonvoting capacity.  
3 Staff for the commission shall be provided by the department of  
4 community, trade, and economic development, with additional staff to be  
5 provided by other state agencies and the legislature, as may be  
6 required. State agencies shall provide the commission with information  
7 and assistance as needed.

8 NEW SECTION. **Sec. 403.** The commission shall convene commencing  
9 June 1, 1995, and shall complete its work by June 30, 1998. The  
10 commission shall submit a report to the governor and the legislature  
11 stating its findings, conclusions, and recommendations not later than  
12 November 1 of each year. The commission shall submit its final report  
13 to the governor and the legislature not later than November 1, 1997.

14 NEW SECTION. **Sec. 404.** The commission shall:

15 (1) Consider the effectiveness of state and local government  
16 efforts to consolidate and integrate the growth management act, the  
17 state environmental policy act, the shoreline management act, and other  
18 land use, planning, environmental, and permitting laws.

19 (2) Identify the revisions and modifications needed in state land  
20 use, planning, and environmental law and practice to adequately plan  
21 for growth, to adequately assess environmental impacts of comprehensive  
22 plans, development regulations, and growth, and to reduce the time and  
23 cost of obtaining project permits.

24 (3) Draft a consolidated land use procedure, following these  
25 guidelines:

26 (a) Conduct land use planning through the comprehensive planning  
27 process under chapter 36.70A RCW rather than through review of  
28 individual projects;

29 (b) Involve diverse sectors of the public in the planning process.  
30 Early and informal environmental analysis should be incorporated into  
31 planning and decision making;

32 (c) Recognize that different questions need to be answered and  
33 different levels of detail applied at each planning phase, from the  
34 initial development of plan concepts or plan elements to implementation  
35 programs;

36 (d) Integrate and combine to the fullest extent possible the  
37 processes, analysis, and documents currently required under chapters

1 36.70A and 43.21C RCW, so that subsequent plan decisions and subsequent  
2 implementation will incorporate measures to promote the environmental,  
3 economic, and other goals and to mitigate undesirable or unintended  
4 adverse impacts on a community's quality of life;

5 (e) Focus environmental review and the level of detail needed for  
6 different stages of plan and project decisions on the environmental  
7 considerations most relevant to that stage of the process;

8 (f) Avoid duplicating review that has occurred for plan decisions  
9 when specific projects are proposed;

10 (g) Use environmental review on projects to: (i) Review and  
11 document consistency with comprehensive plans and development  
12 regulations; (ii) provide prompt and coordinated review by agencies,  
13 tribes, and the public on compliance with applicable environmental laws  
14 and plans, including mitigation for site specific project impacts that  
15 have not been considered and addressed at the plan or development  
16 regulation level; and (iii) ensure accountability by local government  
17 to applicants and the public for requiring and implementing mitigation  
18 measures;

19 (h) Maintain or improve the quality of environmental analysis both  
20 for plan and for project decisions, while integrating these analyses  
21 with improved state and local planning and permitting processes;

22 (i) Examine existing land use and environmental permits for  
23 necessity and utility. To the extent possible, existing permits should  
24 be combined into fewer permits, assuring that the values and principles  
25 intended to be protected by those permits remain protected; and

26 (j) Consolidate local government appeal processes to allow a single  
27 appeal of permits at local government levels, a single state level  
28 administrative appeal, and a final judicial appeal.

29 (4) These guidelines are intended to guide the work of the  
30 commission, without limiting its charge to integrate and consolidate  
31 Washington's land use and environmental laws into a single, manageable  
32 code.

33 NEW SECTION. **Sec. 405.** Members of the commission shall be  
34 reimbursed for travel expenses as provided in RCW 43.03.050 and  
35 43.03.060.

36 NEW SECTION. **Sec. 406.** Sections 401 through 405 of this act shall  
37 expire June 30, 1998.

PART V - MISCELLANEOUS

1

2        NEW SECTION.    **Sec. 501.**    If any provision of this act or its  
3 application to any person or circumstance is held invalid, the  
4 remainder of the act or the application of the provision to other  
5 persons or circumstances is not affected.

6        NEW SECTION.    **Sec. 502.**    Part headings and the table of contents as  
7 used in this act do not constitute any part of the law.

8        NEW SECTION.    **Sec. 503.**    Sections 401 through 406 of this act are  
9 necessary for the immediate preservation of the public peace, health,  
10 or safety, or support of the state government and its existing public  
11 institutions, and shall take effect June 1, 1995.

--- END ---